FEDERAL PAROLE DECISION-MAKING

SELECTED REPRINTS

VOLUME V

UNITED STATES PAROLE COMMISSION

RESEARCH UNIT

December 1984

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PREFACE

This volume contains six recently published papers pertaining to parole decision-making. In addition, the U.S. Parole Commission decision-making guidelines (28 C.F.R. 2.20) and the accompanying notes and procedures are reprinted. The intent in preparing this collection is to bring together these documents in one volume for convenient reference.

With the enactment of Public Law 98-473 (October 12, 1984), a United States Sentencing Commission will be established to develop and issue comprehensive sentencing guidelines for federal cases. The current federal parole system is scheduled to be phased out. Post imprisonment supervision, termed 'supervised release', will continue to be authorized for certain types of cases under standards to be established by the Sentencing Commission.

As the effort to establish federal sentencing guidelines evolved, in large part, from the development and use of the federal parole guidelines, much of the research pertaining to the development and implementation of the federal parole guidelines will be relevant to the development of federal sentencing guidelines. Similarly, research concerning parole supervision will remain applicable to post imprisonment 'supervised release .

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"SCREENING FOR RISK: A REVISED SALIENT FACTOR SCORE (SFS 81)"

Peter B. Hoffman

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SCREENING FOR RISK: A REVISED SALIENT FACTOR SCORE (SFS 81)

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ABSTRACT

Since 1972, the United States Parole Commission has used an actuarial device as an aid in assessing parole prognosis in conjunction with explicit decision guildelines. This article describes the most recent revision of the actuarial device used by the commission. This device (SFS 81) is examined and compared with the device previously used (SFS 76) on five dimensions: validity, stability, reliability, simplicity, and ethical concerns.

Determinations of the duration of imprisonment for federal offenders under the jurisdiction of the United States Parole Commission are made pursuant to explicit decision guidelines. These guidelines use a two-dimensional matrix to set forth the customary range of months to be served for various combinations of offense (severity) and offender (parole prognosis) characteristics, assuming good conduct during the period of confinement. Discretionary decisions outside the guidelines are permitted, but only for "good cause" and upon the provision of specific written reasons.[1] As an aid in assessing the parole prognosis dimension of the guideline matrix, the Parole Commission applies an actuarial device known as the "salient factor score."

The most recent revision of the salient factor score (SFS 81) became effective on August 31, 1981.[2] This device (shown in Appendix A) includes six items which, when added together, produce a score with a range from zero to ten points. The higher the score, the higher is the expected likelihood of favorable outcome upon release (i.e., the lower the probability of recidivism).

Construction, validation, and revalidation of earlier versions of the salient factor score using various follow-up periods and criterion measures have been described by Hoffman and Adelberg (1980), Hoffman and Beck (1974, 1976, 1980), and Hoffman, Stone-Meierhoefer, and Beck (1978). In this research, the revised salient factor score (SFS 81) is compared with the device previously used (SFS 76, shown in Appendix B). The following dimensions are considered: validity, stability, simplicity, scoring reliability, and ethical concerns.

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VALIDITY AND STABILITY

Validity refers to the power of a predictive device: its ability to distinguish the better from the poorer risk cases. Stability refers to the retention of predictive power over time.

Two samples are used in this research. A sample of federal prisoners (N=3,955) released to the community during 1970, 1971, and 1972 provided the data base for the construction of the revised salient factor score.[3] An additional sample of federal prisoners (N=2,282) released to the community during 1978 provided the data base for validating this device.[4] Cases were selected for each sample by last digit of prisoner identification number.[5] Since prisoner identification numbers are assigned sequentially upon admission, this method provides a reasonable approximation of random selection. All three major forms of release from the federal system—parole, mandatory release (with supervision), and expiration of sentence (without supervision)—are included in each sample. A uniform two-year follow-up period for each case calculated from month of release, regardless of method of release, was provided through access to FBI "rap sheet" records.

Favorable outcome is defined as no new criminal offense resulting in a commitment of 60 days or more, no return to prison for parole or community treatment center violation, no parole violation warrant outstanding, and not killed while committing a criminal offense. Unfavorable outcome is defined as any of the above resulting from an act committed during the two year follow-up period.[6] One-half of the cases in each score/category having one or more arrests lacking dispositional information, but with otherwise favorable outcome, received assignment to the unfavorable outcome category.[7]

For use with the guideline matrix, the salient factor score separates cases into four risk categories. Table 1 displays outcome by score and risk category for the revised salient factor score (SFS 81). Table 2 presents these data for the salient factor score used previously (SFS 76). Both devices clearly separate parole applicants into four risk groups for each sample. The Mean Cost Rating (MCR), a statistical measure of predictive power, is shown for each device. The relative magnitude of this statistic, which may take on values from .0 to 1, provides an indication of predictive power above that obtained from knowledge of the base rate. The MCRs found (.38–.41) are toward the high end of the range generally reported in parole prediction studies (see, for example, Simon, 1971; Gottfredson and Gottfredson, 1980). No meaningful difference in predictive power between the devices is found on Sample I (MCR [SFS 81]=.38; MCR [SFS 76]=.38). Similarly, no meaningful difference in predictive power found on Sample II (MCR [SFS 81]=.41; MCR [SFS 76]=.40). Examination of these data also shows that the predictive power of each remains stable from Sample I (the 1970–71–72 sample) to Sample II (the 1978 sample).

SIMPLICITY

Simplicity refers to the absence of complicated mathematics in scoring the device and to the ease with which nonresearchers (e.g., parole decision makers, prison staff, and prisoners) can comprehend the logic and operation of the predictive method. For many years, criminal justice research workers have explored various methods of combining individual items found to be associated with recidivism in an effort to increase predictive power. These methods range from simple additive scoring of items found to be predictive, sometimes referred to in American criminological literature as the Burgess method,[8] to more sophisticated mathematical weighting methods, such as multiple regression and predictive attribute analysis (Gottfredson, 1967). Interestingly, when predictive devices constructed with different methods are put to the test on validation (the application of the device to a new sample—a sample different from the

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TABLE 1

OUTCOME BY SALIENT FACTOR SCORE (SFS 81)

	Percent Favorable Outcome		*Number of Cases*	
	Sample I %	*Sample II* %	*Sample I*	*Sample II*
Very Good Risk Category (Scores 10–8)	90 (92–88)	88 (91–85)	825	735
10	95 (96–94)	94 (96–93)	189	286
9	92 (93–92)	88 (91–85)	319	244
8	85 (89–80)	80 (85–73)	317	205
Good Risk Category (Scores 7–6)	77 (81–73)	75 (81–69)	830	502
7	81 (84–79)	75 (81–68)	387	253
6	73 (78–69)	76 (81–69)	443	249
Fair Risk Category (Scores 5–4)	63 (68–58)	61 (69–53)	947	542
5	65 (70–60)	64 (72–56)	509	271
4	61 (66–56)	58 (67–49)	438	271
Poor Risk Category (Scores 3–0)	54 (58–50)	51 (60–42)	1,353	560
3	61 (65–57)	55 (64–45)	576	218
2	49 (52–45)	51 (60–41)	477	164
1	49 (55–44)	48 (55–41)	252	137
0	54 (60–48)	41 (51–32)	48	41
All Cases	69 (72–65)	70 (77–64)	3,955	2,339
Mean Cost Rating (MCR)	.38 (.39/.37)	.41 (.41/.43)		

Note:

Sample I is the 1970–71–72 sample; *Sample II* is the 1978 sample.

Favorable outcome is defined as none of the following during the two-year follow-up period: a commitment of 60 days or more for a new criminal offense; a return to prison as a parole or community treatment center violator; a parole violation warrant outstanding; or killed while committing a criminal act. *Unfavorable outcome* is defined as any of the above. An arrest during the follow-up period that subsequently results in a commitment of 60 days or more is counted as an unfavorable outcome. Certain minor offenses (e.g., disorderly conduct, drunkenness, traffic offenses) are not counted. One-half of the cases in each category with otherwise favorable outcome but having arrest(s) with pending/missing disposition(s) are scored as having unfavorable outcome.

Figures shown in parentheses display the percentage with favorable outcome obtained if all arrests with pending/missing dispositions had been classified as favorable (the first figure) or unfavorable (the second figure).

one used to construct the device), devices based upon the less sophisticated additive method appear to predict about as well as those constructed using the more sophisticated methods (Simon, 1971; Gottfredson and Gottfredson, 1980). Given this apparent equivalence of predictive power among the different methods, two reasons for preferring an additive type device for operational use stand out. First is its ease of scoring; only simple addition is required. Second, experience has shown that prisoners, prison staff, and parole decision makers find the logic of an additive device relatively easy to understand: the greater the number of positive attributes, the greater is the likelihood of favorable outcome upon release. Both the current and earlier versions of the salient factor score are based upon an additive method.

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TABLE 2

OUTCOME BY SALIENT FACTOR SCORE (SFS 76)

	Percent Favorable Outcome		*Number of Cases*	
	Sample I %	*Sample II* %	*Sample I*	*Sample II*
Very Good Risk Category (Scores 11–9)	92 (93–90)	89 (92–86)	698	642
11	95 (96–93)	96 (97–94)	137	204
10	94 (94–93)	89 (91–86)	287	256
9	88 (90–85)	82 (88–77)	274	182
Good Risk Category (Scores 8–6)	77 (81–73)	73 (79–66)	1,047	662
8	83 (86–79)	80 (85–75)	303	216
7	76 (81–72)	70 (77–63)	355	229
6	73 (77–68)	68 (76–61)	389	217
Fair Risk Category (Scores 5–4)	63 (68–59)	64 (72–56)	1,037	497
5	64 (67–61)	65 (72–57)	452	248
4	62 (68–57)	63 (71–55)	585	249
Poor Risk Category (Scores 3–0)	52 (57–48)	50 (59–41)	1,173	538
3	55 (58–52)	54 (63–44)	509	249
2	52 (58–46)	51 (60–42)	445	194
1	46 (50–42)	39 (49–30)	203	84
0	38 (44–31)	41 (45–36)	16	11
All Cases	69 (72–65)	70 (77–64)	3,955	2,339
Mean Cost Rating (MCR)	.38 (.38/.39)	.40 (.39/.42)		

Note:
Sample I is the 1970–71–72 sample; *Sample II* is the 1978 sample.
Favorable outcome is defined as none of the following during the two-year follow-up period: a commitment of 60 days or more for a new criminal offense; a return to prison as a parole or community treatment center violator; a parole violation warrant outstanding; or killed while committing a criminal act. *Unfavorable outcome* is defined as any of the above. An arrest during the follow-up period that subsequently results in a commitment of 60 days or more is counted as an unfavorable outcome. Certain minor offenses (e.g., disorderly conduct, drunkenness, traffic offenses) are not counted. One-half of the cases in each category with otherwise favorable outcome but having arrest(s) with pending/missing disposition(s) are scored as having unfavorable outcome.
Figures shown in parentheses display the percentage with favorable outcome obtained if all arrests with pending/missing dispositions had been classified as favorable (the first figure) or unfavorable (the second figure).

SCORING RELIABILITY

Scoring reliability refers to the consistency with which decision makers can score actual cases (both individual items and total score). Scoring reliability may be affected by a number of factors, including the complexity of the items and the difficulty in obtaining verified information about the items.[9] It might be expected that the greater the number of items, the greater is the chance for error. However, the effect of such error on the total score may actually be less when a large number of equally weighted items is used than when there are only a few more heavily weighted items.[10]

From a decision-making perspective, scoring reliability relates to equity, which

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may be defined as a moral imperative to provide similar treatment for similarly situated offenders. Thus, scoring reliability is an important concern, particularly when the choice of alternative items does not materially affect the predictive power of the total score.

Three items contained in SFS 81, "prior convictions," "prior commitments," and "opiate dependence," are also used in SFS 76. "Age at current offense/prior commitments," an item in SFS 81, is somewhat different from "age at first commitment," an item in SFS 76. The age part of the revised item deals only with current behavior and thus should be more reliable in scoring. However, the revised item is also somewhat more complex, since five or more prior commitments produce a zero score. No material difference in scoring reliability between the devices relative to the above items is expected. "Commitment free period" is an item used in SFS 81, but not in SFS 76. In a research pretest, scoring of this item appeared to be straightforward. Of prime importance, two items used in SFS 76, "employment" and "auto/checks," are eliminated. "Employment" proved to be a difficult item to score reliably. In some cases, probation officers did not have time to verify this item before the presentence investigation was due, companies had gone out of business, or an offender had claimed to have worked as a day laborer or "off the books," making reliable assessment difficult. While the "auto/check" item did not pose great difficulty in scoring, its presence in both the parole prognosis (offender characteristics) and severity (offense characteristics) dimensions of the guidelines proved somewhat confusing to persons outside the commission;[11] especially since the underlying reason for its predictive power is not intuitively apparent. Finally, the "probation/parole/confinement/escape status" item used in SFS 81 appears somewhat easier to score reliably than its counterpart in SFS 76, "parole ever revoked/ever committed for a new offense while on parole/probation violator this time," since it concerns only recent behavior. Dates of previous parole termination are not always readily available, making it difficult in certain cases to determine whether an offender previously committed a new offense while on parole.

In light of these modifications, the revised salient factor score (SFS 81) offers considerable promise for enhanced scoring reliability as well as greater ease of scoring. Time required for score computation and examination of prisoner appeals for alleged scoring error is expected to decrease slightly.

ETHICAL CONCERNS

Some writers (e.g., von Hirsch, 1976; Singer, 1979) would reject all use of prediction in the application of criminal sanctions (apparently rejecting the traditional concerns of incapacitation and special deterrence, as well as rehabilitation, as reasons for distinguishing among offenders) and would make decisions about offenders only upon the basis of what has been termed "just desert." Von Hirsch (1976) has defined items compatible with "desert" as those concerning the seriousness of the present offense[12] or the frequency, seriousness, and recency of prior offenses. Prior criminal history items, however, tend to be among the items found most predictive of recidivism. Thus, in practice, there is likely to be considerable overlap between a "predictive" dimension and a "desert" dimension.

It appears unlikely that predictive concerns will disappear from the application of criminal justice sanctions. Even if rehabilitation is put aside, both incapacitation and special deterrence are traditional purposes of the criminal law and their inclusion in any penal policy brings forth a concern for prediction. It seems more likely that "just desert" and "prediction" rationales will coexist in practice, although with tension, just as concerns for "crime control" and "due process" coexist. To the extent that alternative candidate items for inclusion in a predictive device are selected with a preference for those compatible with a "just desert" approach, this tension may be reduced.

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Concerning the selection of individual items that are to be included in a predictive device, two separate ethical arguments are relevant. One argument maintains that only items over which the offender could have reasonably been expected to exert control ought to be considered for inclusion. Items such as sex, race, and national origin would be excluded; but it can also be argued that an item such as employment stability should fall into the excludable category, particularly in times of recession. Employment stability, an item in SFS 76, is not used in SFS 81. A second argument maintains that only items which are acceptable under a "just desert" rationale ought to be considered for inclusion. Items that are acceptable under a "just desert" rationale, by definition, are under the offender's control. Thus, items that are acceptable under the second argument are acceptable under the first. SFS 81 places proportionately greater weight than SFS 76 on criminal history items—items that are consistent with a "just desert" approach. Thus, from either of the above perspectives, SFS 81 appears preferable.

SUMMARY

SFS 81, a six-item predictive device recently adopted by the U.S. Parole Commission as an aid in case decision making, demonstrates predictive validity and stability equivalent to that of the seven-item predictive device previously used by the commission. Of prime importance, the revised device holds promise for greater scoring reliability. In addition, SFS 81 appears compatible with what has been termed a "modified just desert" approach (von Hirsch and Hanrahan, 1979) in that it places primary weight on the extent and recency of the offender's criminal history.

ACKNOWLEDGMENTS

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NOTES

[1] These guidelines are codifed 28 C.F.R. §2.20 (as amended). First established in a pilot project in October 1972, a mandate for use of a guideline system is now contained in *The Parole Commission and Reorganization Act of 1976*, specifically 18 U.S.C. §4206 (1976). For a description of guideline development and use, see Gottfredson, Wilkins, and Hoffman (1978), and Hoffman and Stover (1978).

[2] 28 C.F.R. §2.20 (46 Federal Register 132 [July 19, 1981] 35638).

[3] Sample I consists of a 50 percent sample of all prisoners receiving committed sentences of more than one year and one day who were released to the community during the first half of 1970, a 30 percent sample of such prisoners released during the second half of 1971, and a 25 percent sample of such prisoners released during the first half of 1972. Releases to detainers or deportation are excluded. Approximately 4 percent of the eligible sample was excluded due to missing background or follow-up records. For a more detailed description of sampling and data collection procedures, see Gottfredson, Wilkins, and Hoffman (1978). It is to be noted that one item in SFS 81 (commitment-free period) was not directly obtainable from the data originally coded in the 1970–71–72 sample. Thus, a surrogate item had to be used. Furthermore, for other items in both SFS 76 and SFS 81 the definitions originally used for coding the 1970–71–72 sample differed slightly from the definitions adopted by the commission for operational use. For the 1978 sample, operational definitions were available for use in coding; thus, the 1978 sample does not have this limitation.

[4] Sample II consists of a 50 percent sample of all prisoners receiving committed sentences of more than one year and one day who were released to the community during the first six months of 1978. Releases to detainers or deportation are excluded. Background or follow-up records for approximately 4 percent of the total remaining sample could not be located; these cases were excluded. Since a sizable proportion of prisoners released in 1978 were released to the community after a brief period (generally 60–120 days) in a Community Treatment Center (a halfway house), a type of custody that offers possibilities for misbehavior similar to those for prisoners on parole, Sample II includes the records of prisoners (N=161) who were previously placed in a Community Treatment Center during the current period of confinement but were found guilty of misbehavior resulting in return to a secure facility. For purposes of providing a representative sample of releasees, these cases are counted twice, as though they constituted two separate releases: once to the Community Treatment Center, and once from the Community Treatment Center to the community.

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[8] That is, selection of all cases ending in an odd digit produces a 50 percent sample. Federal prisoners have an eight-digit registration number. The last three digits refer to the institution. The fifth digit is the last digit of the individual's identification number.

[9] One limitation of the use of FBI data with a commitment criterion measure is that not all state/local arrest or dispositional information is submitted to the FBI system. Nevertheless, this data set provides the best measure for assessing recidivism for federal offenders who are released throughout the United States, and may be released with or without parole supervision or have different lengths of supervision provided. There is no reason to expect that there is differential recording of individual instances of unfavorable outcome by salient factor score. Furthermore, where there is at least one instance of unfavorable outcome during the follow-up period recorded, a failure to record additional instance(s) does not affect the result. Data were collected at least 18 months after the end of the follow-up period to allow for dispositional information to be recorded. An additional limitation of the criterion measure concerns the classific on of persons returned to prison for technical parole violations (without a commitment for a new offense). Since only persons released to parole or mandatory release supervision are liable for return to prison for technical violations, the classification of such cases as having unfavorable outcome means that persons released under supervision are subject to greater risk of being included in the unfavorable outcome category than persons released without supervision. If technical violators were classified as having favorable outcome, persons released with supervision would be subject to less risk of being classified as having unfavorable outcome than unsupervised releasees (since technical violators would be artificially removed from being "at risk"). For the purpose at hand, the first alternative appeared as the more desirable.

[9] Overall, 7 percent of the cases in Sample I and 13 percent of the cases in Sample II with otherwise favorable outcome had one or more arrests with a pending/missing disposition. Classification of 50 percent of such cases in each score/category as having unfavorable outcome appears warranted for several reasons. First, previous efforts to obtain missing dispositional data for samples of federal releasees indicate an underlying unfavorable outcome rate near 50 percent. Second, this classification reduces the maximum possible bias in any score/category to one-half of the pending/missing rate in that category. In addition, it is to be noted that the predictive power of the devices (as measured by the Mean Cost Rating) is not significantly affected by classification or pending/missing dispositions as all favorable, all unfavorable, or partially favorable. Tables 1 and 2 display this information.

[9] Elmer Burgess used this method in one of the earliest parole prediction studies (Burgess, 1928).

[9] For two studies of reliability in guideline application, see Hoffman, Fife, and Stone-Meierhoefer (1980) and Hoffman, Stone-Meierhoefer, and Fife (1981).

[10] It is also to be noted that the most reliable items to score are not necessarily the most predictive. For example, employment stability, a difficult item to score reliably, has shown considerable predictive power, whereas height, a much easier item to score reliably, would likely show no predictive power at all.

[11] The revised device does not completely eliminate this overlap. For example, heroin/opiate dependence, while a negative indicant of parole prognosis, is in certain small-scale heroin sale cases treated as a mitigating circumstance on the offense severity scale.

[12] In the Parole Commission guidelines, the seriousness of the offense is considered as a separate dimension.

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APPENDIX A
SALIENT FACTOR SCORE (SFS 81)

A. PRIOR CONVICTIONS/ADJUDICATIONS (ADULT OR JUVENILE) ☐
- None ..... = 3
- One ..... = 2
- Two or three = 1
- Four or more = 0

B. PRIOR COMMITMENTS OF MORE THAN 30 DAYS (ADULT OR JUVENILE) ..... ☐
- None ..... = 2
- One or two ..... = 1
- Three or more .... = 0

C. AGE AT CURRENT OFFENSE/PRIOR COMMITMENTS ..... ☐

Age at commencement of the current offense:
- 26 years of age or more . = 2***
- 20–25 years of age ..... = 1***
- 19 years of age or less .. = 0

***EXCEPTION: If five or more prior commitments of more than thirty days (adult or juvenile), place an *x* here ____ and score this item ..... = 0.

D. RECENT COMMITMENT-FREE PERIOD (THREE YEARS) ..... ☐

No prior commitment of more than thirty days (adult or juvenile), or released to the community from last such commitment at least three years prior to the commencement of the current offense ..... = 1

Otherwise ..... = 0

E. PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS VIOLATOR THIS TIME ..... ☐

Neither on probation, parole, confinement, or escape status at the time of the current offense; nor committed as a probation, parole, confinement, or escape status violator this time ..... = 1

Otherwise ..... = 0

F. HEROIN/OPIATE DEPENDENCE ..... ☐

No history of heroin or opiate dependence= 1

Otherwise ..... = 0

TOTAL SCORE ..... ☐

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APPENDIX B
SALIENT FACTOR SCORE (SFS 76)

Item A .....
- No prior convictions (adult or juvenile) = 3
- One prior conviction ..... = 2
- Two or three convictions ..... = 1
- Four or more prior convictions ..... = 0

Item B .....
- No prior commitments (adult or juvenile) = 2
- One or two prior commitments ..... = 1
- Three or more prior commitments ..... = 0

Item C .....
Age at behavior leading to first commitment (adult or juvenile):
- 26 or older . = 2
- 18–25 ..... = 1
- 17 or younger = 0

Item D .....
- Commitment offense did not involve auto theft or check(s) (forgery/larceny) ..... = 1
- Commitment offense involved auto theft, or check(s), or both = 0

Item E .....
- Never had parole revoked or been committed for a new offense while on parole, and not a probation violator this time ..... = 1
- Has had parole revoked or been committed for a new offense while on parole, or is a probation violator this time, or both ..... = 0

Item F .....
- No history of heroin or opiate dependence = 1
- Otherwise ..... = 0

Item G .....
- Verified employment (or full-time school attendance) for a total of at least six months during the last two years in the community = 1
- Otherwise ..... = 0

TOTAL SCORE .....

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"BURNOUT - AGE AT RELEASE FROM PRISON AND RECIDIVISM"

Peter B. Hoffman

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BURNOUT—AGE AT RELEASE FROM PRISON AND RECIDIVISM

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ABSTRACT

Empirical studies frequently have reported an association between age at release from prison and recidivism. For criminal justice decision-makers who wish to consider this knowledge in making prosecutorial, sentencing, or parole decisions, the magnitude of that association must be established while controlling for the effects of other variables known to be associated with recidivism (e.g., prior criminal record). This research addresses this issue using data from a large sample of federal prison releasees. The results indicate that recidivism rates do decline with increased age, and that the association is not diminished when statistical control is exercised for the effect of prior criminal record.

Common in correctional literature is the theory that there exists a "burnout" phenomenon among adult criminal offenders—an age after which recidivism rates diminish significantly, even for previously recidivistic offenders. Support for this theory is provided by empirical studies that have found that age at release from prison is associated with post-release outcome; older releasees consistently show lower recidivism rates than younger releasees. A report by the National Parole Institutes, which provides statistics for recidivism, by age at release, from four jurisdictions, concludes:

> One of the most firmly established pieces of statistical knowledge is that the older a man is when released from prison, the less likely he is to return to crime. Such findings have

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> been reported for many decades, and in numerous jurisdictions, both in the U.S. and abroad—the easiest interpretation of this finding is that people become less criminal as they become more mature. (National Parole Institutes, 1964).

Glaser (1964) reaches a similar conclusion in a large-scale study of the federal prison and parole system. Likewise, Gottfredson (1967), in an extensive review of prediction literature for the President's Task Force on Law Enforcement and the Administration of Justice, reports that empirical studies have found, in general, that the probability of parole violation decreases with age.

For criminal justice decision-makers who wish to consider this knowledge in making prosecutorial, sentencing, or parole release decisions, certain additional information is needed. The magnitude of the association between age at release and recividism must be examined while controlling for the effects of other variables known to be associated with recidivism (e.g., prior criminal record). Otherwise, it will not be known whether or not the statistical association between age at release and recidivism adds to knowledge of the likelihood of recidivism for particular groups of offenders or is merely an artifact of an association between age at release and other predictive variables.

The United States Parole Commission uses an empirically validated actuarial device, known as the "salient factor score," as an aid in assessing likelihood of recidivism. The most recent revision of the salient factor score [SFS 81, shown in Appendix A][1] contains six items primarily related to prior criminal record. This device has shown predictive power in the high range of that generally reported for parole prediction studies, when applied to samples of federal prisoners released six to eight years apart [1970–71–72 releasee sample (MCR=.39); 1978 releasee sample (MCR=.41)]. Construction and validation of this device have been described by Hoffman (1982). A prime focus of this research is whether knowledge of age at release adds to the predictive information provided by this device.

METHODOLOGY

Sampling and Data Collection

Two samples of released federal prisoners are combined for use in this research [combined n = 6,287]. The first [Sample 1; n = 3,954] is a sample of prisoners released to the community during 1970, 1971, and 1972. The second [Sample 2; n = 2,333] is a sample of prisoners released to the community during 1978. Cases were selected for each sample by last digit of prisoner identification number. Since prisoner identification numbers are assigned sequentially upon admission, this method provides a reasonable approximation of random selection. All three major forms of release from the federal system (parole, mandatory release [with supervision], and expiration of sentence [without supervision]) are included in each sample. A uniform two year follow-up period for each case, calculated from month of release, regardless of method of release, was provided through access to FBI "rap sheet" records. Data on background variables was collected by research staff from the case files used by the Parole Commission. Follow-up data was collected by research staff from FBI "rap sheet" records. For further information on sampling and data collection procedures, see Gottfredson, Wilkins, and Hoffman (1978) and Hoffman (1982).

Criterion Measure

Favorable post-release outcome (absence of recidivism) is defined as no new criminal offense resulting in a commitment of sixty days or more; no return to prison for parole or community treatment center violation; no parole violation warrant outstanding; and not killed while committing a criminal offense.[2] Unfavorable post-release outcome (recidivism) is defined as any of the above resulting from an act committed during the two year follow-up period.[3]

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TABLE 1

POST-RELEASE OUTCOME BY AGE AT RELEASE
(COMBINED SAMPLE)

Age at Release	Percent Favorable Outcome: Column A: Simple, bivariate association	Column B: Adjusted for prior criminal history items	Column C: Adjusted for salient factor score	Number of Cases
25 or younger	65%	60%	64%	1,733
26–30	68%	68%	68%	1,500
31–35	70%	72%	70%	984
36–40	69%	71%	69%	702
41 or older	76%	80%	77%	1,368
All cases	69%	69%	69%	6,287
Significance $F(df=4,6281)$:	15.6; $p<.001$	45.6; $p<.001$	21.0; $p<.001$	

ANALYSES AND FINDINGS

Table 1 displays three measures of the association between age at release and post-release outcome during the two year follow-up period. The simple, bivariate association between the variables is shown in column A. As the earlier studies cited have reported, there is a positive, statistically significant bivariate association between age at release and favorable post-release outcome [$F(df=4,6281) = 15.6$, $p<.001$].

Column B shows the association between age at release and post-release outcome using analysis of covariance to adjust for the effect of prior criminal history. For this purpose, the salient factor score, minus the age-related portion of Item C, is used as a measure of prior criminal history. When prior criminal history is taken into account, the association between age at release and favorable post-release outcome is even stronger [$F(df=4,6281) = 45.6$, $p<.001$].

Column C displays the association between age at release and post-release outcome using analysis of covariance to adjust for the effect of the complete salient factor score. Even when the salient factor score is taken into account, the association between age at release and favorable post-release outcome remains positive and statistically significant [$F(df=4,6281) = 21.0$, $p<.001$].

Table 2, which provides the analyses shown above separately for Samples 1 and 2, illustrates the consistency of this association over time.

Returning to Table 1, Column C, it may be seen that prisoners in the group age forty-one and older at release show a favorable outcome rate approximately eight percentage points higher than expected from knowledge of salient factor score. Prisoners in the group age twenty-five and younger at release show a favorable outcome rate approximately five percentage points lower than expected. No differences are observable for the groups aged 26–30, 31–35, and 36–40 at release. A test for significant interaction between age group and salient factor score proved negative. There exists, however, the possibility that the comparative favorable outcome rate for certain of the younger releasees (those sentenced under the Youth Corrections Act or Juvenile Justice Act) may be artificially deflated, since these cases have greater than average exposure to parole supervision and, thus, to the possibility of parole revocation.[4]

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TABLE 2

POST-RELEASE OUTCOME BY AGE AT RELEASE
(SAMPLE 1, SAMPLE 2)

Age at Release	Percent Favorable Outcome			Number of Cases (Sample 1, 2)
	Column A: Simple, bivariate association	Column B: Adjusted for prior criminal history items	Column C: Adjusted for salient factor score	
25 or younger	65/64 %	59/58 %	63/63 %	1,327/406
26–30	68/68 %	68/67 %	68/69 %	823/677
31–35	69/70 %	72/72 %	70/70 %	539/445
36–40	69/68 %	72/71 %	70/69 %	393/309
41 or older	75/78 %	79/80 %	77/78 %	872/496
All cases	69/70 %	69/70 %	69/70 %	3,954/2,333

TABLE 3

ESTIMATED PERCENT FAVORABLE OUTCOME BY SALIENT FACTOR SCORE CATEGORY/AGE AT RELEASE

Salient Factor Score Category	Percent Favorable Outcome	
	Sample 1 (*N*)	Sample 2 (*N*)
Very Good Risk (Scores 10–8)	90% (825)	88% (735)
Good Risk (Scores 7–6)	77% (830)	75% (502)
Fair Risk (Scores 5–4)	63% (947)	61% (542)
Poor Risk (Scores 3–0)	54% (1,353)	51% (560)

NOTES
(1) If age forty-one or older at release, add six to eight percentage points;
(2) If age twenty-five or younger at release, subtract four to five percentage points.

Consequently, the analysis was redone with this group of prisoners deleted. Under the revised analysis, prisoners in the group age forty-one and older at release show a favorable post-release outcome rate approximately six percentage points higher than expected by knowledge of salient factor score, while prisoners in the group age twenty-five and younger at release show a favorable outcome rate approximately four percentage points lower than expected. No difference was found for the groups aged 26–30, 31–35, and 36–40 at release.[5] This latter analysis provides a slightly more

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conservative estimate of the effect of age at release.

Thus, even when statistical control is exercised for the effect of the salient factors, knowledge of age at release appears to contribute additional predictive power. Table 3 provides an estimate of the additional predictive power provided by knowledge of age at release when used in conjunction with the four salient factor score risk categories of the Parole Commission's paroling policy guidelines.[6]

SUMMARY AND LIMITATIONS

Although control was not exercised for the effect of all the variables that might possibly impact upon the association between age at release and post-release outcome, the data presented add to the evidence that recidivism rates do decline with increased age at release, and that this association is not diminished when statistical control is exercised for the effect of prior criminal history. Furthermore, age at release—when considered in conjunction with salient factor score—does appear to add predictive power for certain categories of cases. Assuming that older offenders are not simply becoming more skilled at avoiding the grasp of the criminal justice system, these data provide additional support for the existence of an age related "burnout" phenomenon.

ACKNOWLEDGMENT

This article is adapted from *U.S. Parole Commission Research Unit Report Thirty-three*, December 1982.

NOTES

[1] The most recent revision of the salient factor score became effective on August 31, 1981 (codified at 28 CFR. 2.20 [1982]).

[2] Since a sizeable proportion of prisoners released in 1978 were released to the community after a brief period (generally 60–120 days) in a Community Treatment Center (a halfway house), a type of custody that offers possibilities for misbehavior similar to those of parole, Sample 2 includes the records of prisoners (N=161) who were previously placed in a Community Treatment Center during the current period of confinement, but who were found guilty of misbavior resulting in their return to a secure facility. For purposes of providing a representative sample of releasees, these cases are counted twice, as though they constituted two separate releases: once to the Community Treatment Center, and once from the Community Treatment Center to the community.

[3] One limitation of the use of FBI data with a commitment criterion measure is that not all state/local arrest or dispositional information is submitted to the FBI system. Nevertheless, this data provides the best measure for assessing recidivism for federal offenders who are released throughout the United States and may be released with or without parole supervision, or who have different lengths of supervision provided. There is no reason to expect there is differential recording of individual instances of unfavorable outcome by salient factor score. Furthermore, where there is at least one instance of unfavorable outcome during the follow-up period recorded, a failure to record additional instance(s) does not affect the result. Data were collected at least 18 months after the end of the follow-up period to allow for dispositional information to be recorded. An additional limitation of the criterion measure concerns the classification of persons returned to prison for technical parole violations (without a commitment for a new offense). Since only persons released to parole or mandatory release supervision are liable to return to prison for technical violations, the classification of such cases as having unfavorable outcome means that persons released under supervision are subject to a greater risk of being included in the unfavorable outcome category than persons released without supervision. If technical violators were classified as having a favorable outcome, persons released with supervision would be subject to less risk of being classified as having unfavorable outcomes than unsupervised releasees (since technical violators would be artificially removed from being "at risk"). For the purpose at hand, the first alternative appeared as the more desirable. In addition, 7 percent of the cases in Sample 1 and 13 percent of the cases in Sample 2 with otherwise favorable outcomes had one or more arrests with a pending/missing disposition. To adjust for this missing information, 50 percent of such cases in each category under study were classified as having an unfavorable outcome. This classification appears warranted for several reasons. First, previous efforts to obtain missing dispositional data for samples of federal releasees indicate an underlying unfavorable outcome rate near 50 percent. Second, this classification reduces the maximum possible bias in any category to one-half of the pending/missing rate in that category.

[4] All initial releasees under the Youth Corrections Act by law have a minimum of two years parole supervision. Cases sentenced under the Juvenile Justice Act (formerly the Juvenile Delinquency Act) generally also have at least two years parole supervision.

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[5] The actual percentages with favorable outcome are: age 41 or older (77 percent); 36–40 (69 percent); 31–35 (70 percent); 26–30 (69 percent) and 25 or younger (67 percent); all cases (71 percent) [N=5,017; $F(4)$=4,5011) = 11.0, p<.001].

[6] The Parole Commission's paroling policy guidelines are set forth at 28 CFR 2.20. For a description of the development of the parole guidelines, see Gottfredson, Wilkins, and Hoffman (1978).

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APPENDIX A
Salient Factor Score (SFS 81)

Register Number_____ Name_____

Item A: Prior Convictions/Adjudications (Adult or Juvenile) ..... ☐

None ..... = 3
One ..... = 2
Two or three ..... = 1
Four or more ..... = 0

Item B: Prior Commitment(s) of More Than Thirty Days (Adult or Juvenile) ... ☐

None ..... = 2
One or two ..... = 1
Three or more ..... = 0

Item C: Age at Current Offense/Prior Commitments ..... ☐

Age at commencement of the current offense:
26 years of age or more ..... = 2 ***
20–25 years of age ..... = 1 ***
19 years of age or less ..... = 0

***_Exceptions:_ If five or more prior commitments of more than thirty days (adult or juvenile), place an "x" here _____ and score this item ..... = 0.

Item D: Recent Commitment Free Period (Three Years) ..... ☐

No prior commitment of more than thirty days (adult or juvenile) or released to the community from last such commitment at least three years prior to the commencement of the current offense ..... = 1

Otherwise ..... = 0

Item E: Probation/Parole/Confinement/Escape Status Violator This Time ..... ☐

Neither on probation, parole, confinement, or escape status at the time of the current offense; nor committed as a probation, parole, confinement, or escape status violator this time ..... = 1

Otherwise ..... = 0

Item F: Heroin/Opiate Dependence ..... ☐

No history of heroin/opiate dependence .. = 1

Otherwise ..... = 0

TOTAL SCORE ..... ☐

NOTE: For purposes of the Salient Factor Score, an instance of criminal behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be treated as a conviction, even if a conviction is not formally entered.

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"PAROLE GUIDELINES"

Peter B. Hoffman

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PROBATION AND PAROLE

The article on PAROLE GUIDELINES *describes and assesses experience with the guidelines that are utilized in an effort to improve parole decision-making and particularly to reduce disparities in the time served in federal prisons.*

1.
PAROLE GUIDELINES

The statements and opinions expressed here are those of the author and do not necessarily represent those of the United States Parole Commission or the Department of Justice.

One of the most troublesome issues in the administration of criminal justice concerns the appropriate use of discretionary power. On the one hand, the unguided and unfettered exercise of discretion can produce arbitrary and capricious decisions, decision inequity, and unwarranted disparity. Such has been a major criticism of sentencing and parole practices. On the other hand, the application of rigid and mechanical rules can lead to equally unjust and undesirable results. This article describes a set of principles and procedures that has been adopted by the United States Parole Commission to address the use of discretion in parole selection.

Structuring discretion. In an effort to structure its broad discretion and provide rational, consistent, and equitable decisions without removing the opportunity for consideration of individual case factors, the United States Parole Commission has promulgated decision-making guidelines (U.S. Department of Justice). These guidelines set forth the major elements considered in the parole selection decision and the weights customarily given to them. The guideline concept postulates that by articulating the major decision criteria and the customary decision policy associated with each combination of major decision elements, a decision framework can be created that is specific enough to guide and control discretion, yet flexible enough to allow deviation from customary policy where warranted by the facts and circumstances of particular cases.

The parole guideline system is a product of a three-year study of federal parole decision-making funded by the Law Enforcement Assistance Administration and conducted by the Research Center of the National Council on Crime and Delinquency in a collaborative effort with federal parole board members and staff. The guideline matrix developed was first used experimentally in actual case decision-making in October 1972. By 1974, its use had been expanded to all federal parole selection decisions on a permanent basis.

The guideline matrix. The guideline matrix used by the Parole Commission (28 C.F.R. § 2.20 (1981)) is in the form of a two-axis chart. Table 1 displays this matrix in abbreviated form. On the vertical axis, the seriousness (gravity) of the prisoner's current offense is considered. Seven categories of offense severity are set forth. For each category, the Commission has listed examples of common offense behaviors. Placement of offense behavior examples along the severity axis is a policy decision reflecting the judgment of the Commission members as to the seriousness or gravity of these behaviors. Not all possible offense behaviors are listed, and severity ratings for those not listed must be determined by extrapolation and interpolation from those that are listed.

On the horizontal axis, four categories of parole prognosis (very good, good, fair, and poor) are specified. A prediction device, termed a *salient factor score*, is used to assist in making parole prognosis assessments. This device was developed from a statistical analysis of the records of persons previously released from federal prisons. Figure 1 displays this device. Commission regulations provide that the salient factor score is to be used to assess the appropriate prognosis category: for example, a salient factor score of

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TABLE 1. *Guidelines for decision-making (customary total time to be served before release)*

Offense characteristics: severity of offense behavior (examples)	*Offender characteristics: parole prognosis (salient factor score)*			
	Very good (10 to 8)	*Good* (7 to 6)	*Fair* (5 to 4)	*Poor* (3 to 0)
Low				
Gambling law violations (no managerial or proprietary interest)	ADULT RANGE			
	<=6 months	6–9 months	9–12 months	12–16 months
Marihuana/hashish, possession with intent to distribute/sale [very small scale (e.g., less than 10 lbs. of marihuana/less than 1 lb. of hashish/less than .01 liter of hash oil)]	(YOUTH RANGE)			
	(<=6) months	(6–9) months	(9–12) months	(12–16) months
Low moderate				
Counterfeit currency or other medium of exchange [(passing/possession) less than $2,000]	ADULT RANGE			
	<=8 months	8–12 months	12–16 months	16–22 months
Property offenses (forgery/fraud/theft from mail/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property with intent to resell) less than $2,000	(YOUTH RANGE)			
	(<=8) months	(8–12) months	(12–16) months	(16–20) months
Moderate				
Property offenses (theft/forgery/fraud/ embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) $2,000–$19,999	ADULT RANGE			
	10–14 months	14–18 months	18–24 months	24–32 months
Smuggling/transporting of alien(s)	(YOUTH RANGE)			
	(8–12) months	(12–16) months	(16–20) months	(20–26) months
High				
Involuntary manslaughter (e.g., negligent homicide)	ADULT RANGE			
	14–20 months	20–26 months	26–34 months	34–44 months
Property offenses (theft/forgery/fraud/ embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) $20,000–$100,000	(YOUTH RANGE)			
	(12–16) months	(16–20) months	(20–26) months	(26–32) months

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TABLE 1. *Guidelines for decision-making (cont.)*

Offense characteristics: severity of offense behavior (examples)	*Offender characteristics: parole prognosis (salient factor score)*			
	Very good (10 to 8)	*Good* (7 to 6)	*Fair* (5 to 4)	*Poor* (3 to 0)
Very high				
Robbery (1 or 2 instances)		ADULT RANGE		
Breaking and entering/burglary of residence; or breaking and entering of other premises with hostile confrontation with victim	24–36 months	36–48 months	48–60 months	60–72 months
Extortion [threat of physical harm (to person or property)]		(YOUTH RANGE)		
	(20–26) months	(26–32) months	(32–40) months	(40–48) months
Greatest I				
Aggravated felony (e.g., robbery: weapon fired or injury of a type normally requiring medical attention)		ADULT RANGE		
	40–52 months	52–64 months	64–78 months	78–100 months
Opiates, possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 50 grams but not more than 1 kilogram (1000 grams) of 100% pure heroin or equivalent amount)]		(YOUTH RANGE)		
	(30–40) months	(40–50) months	(50–60) months	(60–76) months
Greatest II				
Aggravated felony—serious injury (e.g., robbery: injury involving substantial risk of death or protracted disability, or disfigurement) or extreme cruelty/brutality toward victim		ADULT RANGE		
	52+ months	64+ months	78+ months	100+ months
Aircraft hijacking		(YOUTH RANGE)		
	(40+) months	(50+) months	(60+) months	(76+) months
	Specific upper limits are not provided due to the limited number of cases and the extreme variation possible within category.			

General notes, referenced notes, definitions, and other offenses have been omitted from this table.

Source: 28 C.F.R. § 2.20 (1981).

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FIGURE 1. *Salient factor score*

Item A: Prior convictions/adjudications (adult or juvenile) ☐
- None = 3
- One = 2
- Two or three = 1
- Four or more = 0

Item B: Prior commitment(s) of more than thirty days (adult or juvenile) ☐
- None = 2
- One or two = 1
- Three or more = 0

Item C: Age at current offense/prior commitments ☐

Age at commencement of the current offense:
- 26 years of age or more = 2*
- 20–25 years of age = 1*
- 19 years of age or less = 0

* EXCEPTION: If five or more prior commitments of more than thirty days (adult or juvenile), place an "x" here __ and score this item = 0.

Item D: Recent commitment-free period (three years) ☐

No prior commitment of more than thirty days (adult or juvenile) or released to the community from last such commitment at least three years prior to the commencement of the current offense = 1
Otherwise = 0

Item E: Probation/parole/confinement/escape status violator this time ☐

Neither on probation, parole, confinement, or escape status at the time of the current offense; nor committed as a probation, parole, confinement, or escape status violator this time = 1
Otherwise = 0

Item F: Heroin/opiate dependence ☐

No history of heroin/opiate dependence = 1
Otherwise = 0

Total score ☐

SOURCE: 28 C.F.R. § 2.20 (1981).

10 to 8 results in placement in the "very good" risk category. However, the Commission's decision-makers may use their clinical judgment to override this actuarial aid by rendering a decision outside the guidelines, either above or below, provided that they clearly articulate the specific basis for their action. In this way, the Commission has attempted to combine the advantages of both actuarial and clinical methods in making parole prognosis assessments.

In Table 1, a decision range in months is specified for each combination of offense (severity) and offender (parole prognosis) characteristics. This decision range sets forth Commission policy as to the customary range of months to be served before release, assuming that the prisoner demonstrates good institutional behavior. The actual parole decision is also subject to the constraints of sentence length, since the parole board has authority to release a prisoner only within the limits of the maximum and minimum sentence imposed.

For example, an adult parole applicant with a moderate severity offense such as forgery/fraud/theft of $15,000 and a good parole prognosis (a salient factor score of 6 or 7) might be expected to serve between fourteen and twenty months before release, in the absence of particularly aggravating or mitigating factors and assuming good institutional conduct. An adult parole applicant with a very high severity offense such as robbery and a fair parole prognosis (a salient factor score of 4) might be expected to serve between forty-eight and sixty months before release. For Greatest II severity cases, no upper limits are specified. In such cases, decisions must be made by ex-

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trapolation from the time ranges specified for Greatest I severity cases with similar parole prognosis and institutional behavior.

Guideline departures. It must be stressed that the establishment of parole guidelines does not eliminate or even attempt to eliminate all discretion. Rather, it represents an attempt to steer a path between the evils of completely unstructured and unguided discretion and those of a rigid, fixed, and mechanical approach. Decisions outside the guidelines, either above or below, may be made for "good cause," provided that specific reasons are given for departure from the customary policy established by the guideline range. Examples of circumstances that might warrant a departure from guideline policy are particularly aggravating or mitigating offense factors or clinical judgment, supported by specifics, that the applicant is a better or poorer parole risk than indicated by the salient factor score. Since the guideline ranges are predicated upon good institutional conduct, a record of disciplinary infractions in the institution may warrant a decision above the guideline range. On the other hand, sustained participation in institutional programs may reduce the time to be served before release. Specific guidelines governing penalties for institutional misconduct and rewards for superior program achievement have been developed by the Commission to supplement the standards set forth in Table 1.

During the period from 1976 through 1980, approximately 20 percent of Parole Commission decisions at initial parole consideration were discretionary decisions to set a release date above or below the applicable guideline range. Thus, for the substantial majority of cases, the guidelines clearly structure the Commission's exercise of discretion.

Provision of written reasons. Use of the guideline matrix facilitates the provision of explicit written reasons for Parole Commission decisions. During a parole consideration hearing, the Commission's representatives (hearing examiners) discuss with the parole applicant his offense severity rating, salient factor score, and applicable guideline range, as well as any other pertinent factors to be considered. After the hearing, the prisoner receives a written notice indicating the official decision and the reasons for it. This statement in each case contains an explanation of the offense severity rating, an item-by-item breakdown of the salient factor score, the applicable guideline range, and the Commission's finding as to whether or not a departure from the guideline range is found warranted. If a decision outside the guidelines is found warranted, the specific reasons for guideline departure are given. Provision of written reasons in actual case decision-making is shown by the following examples.

Example 1. Your offense behavior has been rated as "high severity" because it involved the theft of $24,000 in bonds. You have a salient factor score of 10. A copy of the item-by-item breakdown is attached. You have been in custody a total of three months. Guidelines established by the Commission which consider the above factors indicate a range of fourteen to twenty months to be served before release for adult cases with good institutional conduct. After review of all relevant factors and information presented, a decision outside the guidelines is not found warranted. Parole after fourteen months in custody, contingent upon a continued satisfactory record of institutional conduct.

Example 2. Your offense behavior has been rated as "very high severity" because it involved bank robbery. You have a salient factor score of 2. A copy of the item-by-item breakdown is attached. You have been in custody a total of four months. Guidelines established by the Commission which consider the above factors indicate a range of sixty to seventy-two months to be served before release for adult cases with good institutional conduct. After review of all relevant factors and information presented, a decision above the guidelines appears warranted because (1) you have a repetitive history of assaultive behavior (specifically, you have two prior convictions for armed robbery), and your present offense involved robbery; (2) you have two serious disciplinary infractions for possession of contraband (sharpened instruments). Continue to expiration of sentence (mandatory release occurs at eighty months on your ten-year sentence).

The Parole Commission's format for provision of written reasons has generally received favorable comment. For example, one federal court reviewing a notice similar to those cited above commented: "This statement applying the published Parole Board guidelines to this petitioner is adequate notice of the reasons for denial of parole. A review of the published guidelines in light of the notice given the petitioner reveals with specificity why parole was denied. Petitioner could hardly ask for a more objective and informative evaluation of his parole suitability status" (*Tougas v. Keohane*, Civil Action No. 79-86 (District of Arizona, June 11, 1975)).

Guideline revision. Since the danger of the overly rigid application of rules may exist with a guideline system, just as the problem of unwarranted disparity exists when discretion is left unstructured, Commission policy provides that guideline use is to be monitored by its research section and that the guideline

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matrix is to be reviewed at periodic intervals to consider possible revision. Through these procedures, the Commission can examine the sufficiency of reasons given for departures from the guidelines, the question of whether there are recurring patterns of circumstances for which additional guideline policy may be specified, and the question of whether any revisions in the severity scale, salient factor score, or time ranges are warranted. For example, changes in the salient factor score may be warranted by additional knowledge concerning the prediction of recidivism. Changes in the severity ratings may be warranted by the changing of public attitudes toward certain types of crime. Before final consideration, proposed revisions to the guideline matrix are published to provide an opportunity for public comment under the provisions of the Administrative Procedure Act (part), 5 U.S.C. § 553 (1976 & Supp. III 1979).

Presumptive parole dates. The establishment of the guideline system has also afforded prisoners greater certainty as to the time required to be served before release. Since the guideline elements (offense and salient factor score) may be determined at the time of commitment, it is feasible to provide prisoners with initial parole consideration hearings within a short time (usually 120 days) of commitment so as to examine these elements and to establish a presumptive release date (a guaranteed release date contingent upon a clear disciplinary record and development of a suitable release plan). Prisoners are given review hearings by the Commission at periodic intervals after the initial hearing (generally every eighteen or twenty-four months), but presumptive dates once set are changed only for disciplinary infractions, sustained superior program achievement, or exceptional circumstances such as the revealing of significant new information. Furthermore, the advancement of a presumptive date permitted for sustained superior institutional program achievement is purposely kept limited to discourage prisoners from enrolling in programs merely in the hope of impressing the parole board.

Thus, provision of presumptive release dates is designed to reduce the unnecessary uncertainty that has been associated with traditional parole decision-making. In each case, the presumptive release date is contingent upon a record of acceptable institutional conduct. For prisoners serving longer terms, a limited reward for sustained participation in prison programming is allowed.

The Parole Commission and Reorganization Act. The guideline system described above was implemented administratively by the United States Board of Parole between 1972 and 1974. In 1976, the Parole Commission and Reorganization Act of 1976 (part), 18 U.S.C. §§ 4201–4218 (1976) provided a statutory mandate for the continuation of the system. This legislation specifies the major elements to be considered in federal parole grant determinations: offense severity, parole prognosis, and institutional conduct. It requires that the Parole Commission establish explicit guidelines for parole selection that consider the above criteria. Furthermore, it provides that decisions departing from the guidelines be made only for "good cause" and be accompanied by specific reasons for such departure. Thus, decision-makers are obligated to apply the guidelines to each individual case, but retain discretion to render a decision departing from the guidelines provided that they specify adequate reasons for such departure in the case record. That is, each prisoner is told how his case is assessed against the guidelines, and if a decision departing from the guidelines is found warranted, the prisoner is told the specific reasons for such action. In this manner the guideline system facilitates review both of general policy and of individual case decisions. Three sequential questions may be asked. Is the general policy specified by the guidelines reasonable? Were the guidelines correctly applied in a particular case? If the decision was outside the guidelines, were the reasons given for departure from customary policy specific and adequate; or, if the decision was within the guidelines, did substantial reasons exist which made compliance with the guidelines in the particular case unreasonable?

Summary. Parole board members make two types of decisions: individual case decisions and broader policy decisions. In individual case decisions, the parole guideline model is intended to provide more rational and consistent decisions while allowing the discretion required for individual case consideration. At the same time, the articulation of decision criteria through the guideline system is intended to promote openness and to facilitate public assessment of the rationality and appropriateness of the Commission's paroling policy. Building upon the experience of the United States Parole Commission, parole guidelines have been developed and implemented in a number of other jurisdictions, including those of Oregon, Washington, Minnesota, New York, Utah, Maryland, Georgia, and Florida.

PETER B. HOFFMAN

See also PREDICTION OF CRIME AND RECIDIVISM; PRISONERS, LEGAL RIGHTS OF; PROBATION AND PAROLE, *articles on* PROCEDURAL PROTECTION *and* RELEASE AND REVOCATION; REHABILITATION; SENTENCING: GUIDELINES.

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"THE CASE FOR PREDICTION IN THE MODIFIED DESERT MODEL OF CRIMINAL SENTENCING"

John Monahan

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The Case for Prediction in the Modified Desert Model of Criminal Sentencing

John Monahan*

This paper will argue the notion that what offenders are expected to do when they get out of prison is a legitimate concern in deciding how long to keep them in it. In terms popularized by von Hirsch and Hanrahan (1979), the Modified Desert Model of sentencing, which allows some role to such crime control devices as predictions of recidivism, will be argued to be superior to the unadulterated Desert Model, which does not. The arguments will be of both a negative and a positive sort. There will first be an attempt to demonstrate that the Desert Model, in its current state of development, fails to provide a self-sufficient scheme for assigning punishment to the individual offender. It will then be argued that crime reduction is not as irrelevant to the sentencing process as current liberal fashion would have it, but rather is an acceptable, albeit limited, determinant of the allocation of punishment. Finally, a preliminary decision-rule will be offered for determining which factors believed to be associated with recidivism should be taken into account in setting individual sentences, and to what degree.

I would like to make clear at the outset that I am *not* in *any* sense advocating a return to unfettered discretion in setting sentence length, to indeterminate sentences, or to the primacy of predictive restraint. I pledge allegiance to the principle of commensurate deserts and to the sentencing reforms for which it stands. I feel sufficiently secure in my own credentials as a card-carrying just-deserter (Monahan & Monahan, 1977; Monahan, 1981; American Psychological Association, 1978), however, to suggest that it is not by desert alone that justice lives.

Just Deserts: Pure and Less Pure

Both the Desert and the Modified Desert Model of sentencing are predicated upon the "principle of commensurate deserts," namely, that "the severity of the punishment be commensurate with the seriousness of the offender's criminal conduct (von Hirsch & Hanrahan, 1979, p. 4). In the Desert Model, this principle is "rigorously observed" (p. 16), whereas the Modified Desert Model allows "limited deviations from the constraints of commensurateness" and "gives

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somewhat greater scope for future-oriented considerations in deciding how much to punish" (p. 18). These future-oriented considerations would include the ability of the punishment to incapacitate, rehabilitate, or deter. This may involve predictions of the likelihood of recidivism (p. 21).

Both the Desert and the Modified Desert Models give primacy to the principle of commensurate deserts in setting sentences. In the Desert Model, the primacy is absolute: desert is the *only* thing one considers in sentencing individuals. In the Modified Desert Model, the primacy is relative: desert takes precedence, but other considerations – crime control considerations – can play a secondary role. How large a role? "It will not be easy to draw a principled demarcation" (von Hirsch & Hanrahan, 1979, p. 19). Words like "limited" and "modest" are used to describe the desired scope of non-desert considerations. Much as Norval Morris (1974) had earlier proposed, in the Modified Desert Model, "desert would determine the range of penalties applicable to conduct of a given degree of seriousness; but, within the range, other factors could be considered in fixing the specific penalty" (von Hirsch and Hanrahan, 1979, p. 18).

The position taken here differs from that of von Hirsch and Hanrahan in that they appear to see the inclusion of crime control objectives in sentencing as a reluctant concession to the *realpolitik* of criminal justice reform. It is a compromise of principles – a bone thrown to the political yahoos of the law and order right – and inferior on the merits to the more pristine pursuit of justice and justice alone. What is argued here, on the contrary, is that modifying the Desert Model by including crime control objectives is *preferable* to the single-minded pursuit of commensurate deserts. It is preferable *by default* in that the principle of commensurate deserts can provide no more than rough upper and lower bounds on punishment in any event (Morris, 1974), and some principle other than desert must be invoked to choose within the range. And it is *affirmatively* preferable, in that, justice to the offender being equal (within our large measurement error), a scheme which promotes justice to potential victims is superior to one that does not.

On the Impossibility of Precisely Assessing Crime "Seriousness"

Under the principle of commensurate deserts, the severity of punishment is proportional to the seriousness of the offender's criminal conduct. Seriousness, in turn consists of two components: the *harm* committed and the degree of the offender's *culpability* in committing it.

For seriousness to be an operational guide to sentencing decisions, therefore, requires both harm and culpability to be reliably assessed in the individual case. According to the strict Desert Model, seriousness must be reliably assessed, not just in a ballpark manner, but in a manner that yields a *precise* score that can be readily translated into a specific degree of punishment. This is so since there is no other factor in the model to reduce uncertainty in arriving at sentence length.

How does one arrive at a precise specification of the "seriousness" of criminal conduct, to which the severity of the punishment is to be proportionate? According to von Hirsch (1976, pp. 90–94), one first scales various types of criminal conduct *relative to one another* in terms of their seriousness, and then

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sets the magnitude of the resulting scale in terms of beliefs about *absolute* crime seriousness.

von Hirsch (1976) acknowledges that, regarding the absolute magnitude of the seriousness scale, the principle of commensurate deserts can supply only "fuzzy" outside limits (p. 91), ones that are "imprecise" (p. 93). It is necessary, therefore to invoke the utilitarian principle of *deterrence* to assist when the scale of crime seriousness is transformed into the scale of punishment severity. He believes that *relative* seriousness can be reliably measured.

There is, however, reason to doubt that anything like a consensus exists on the seriousness of criminal conduct. While there may be some agreement on relative levels of harm, there appears to be great variation in perceptions of the absolute magnitude of harm represented by various criminal acts, and in either the relative or absolute level of culpability represented by various criminal actors.

Let us briefly examine both the empirical and the conceptual literature on this point.

Surveys such as that of Wolfgang and Sellin (1964) which report a high degree of reliability in public perceptions of crime seriousness are viewed as providing a basis (although not an exclusive one) for assessing the seriousness of offenses (von Hirsch, 1976; von Hirsch & Hanrahan, 1979). von Hirsch (1978) is careful to note that popular judgments of seriousness "may be untenable either because they contain factual misjudgments or because they involve moral judgments that do not withstand scrutiny . . . One should, in other words, *consider* the popular judgments, not necessarily abide by them" (p. 623).

Yet, as Gibbs (1978) notes, the Sellin-Wolfgang "seriousness scale" is a measure of the "extent of social (public) disapproval of the crime." It is, in other words, a measure of perceived *harm*, with little relationship to culpability, the other half of what is meant by "seriousness." Indeed the notion that "seriousness" consists of the separate components of harm and culpability "is not even investigated, much less vindicated, by Sellin and Wolfgang" (Bedau, 1977). As well, the high reliabilities of the Sellin-Wolfgang scale are for *relative* judgments. All of us agree that murder is more "harmful" than pocket-picking. In terms of agreement on the *absolute* level of the harm represented by given crimes, however, social consensus breaks down, and "the inevitability of subjectivity" (Gibbs, 1978), takes center stage.

Yet the difficulty in gaining agreement on the absolute social harm caused by given offenses is mild compared to the difficulty in gaining agreement on the culpability of given offenders. As Messinger and Johnson (1978) noted in their history of the recent determinate sentence law in California, "There is little sign that the various interested parties agree what 'deserts' are 'just' for different offenses, or, above all, different offenders." A number of empirical studies have demonstrated that attributions of culpability or blame are highly influenced by factors having little relevance to notions of desert. For example, De Jong et al. (1976) studied sentences recommended in two cases of a store hold-up each involving two offenders. In one condition, subjects were told that one of the two offenders had escaped successfully. In another condition, they were told the

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escape attempt was unsuccessful: the offender was captured. The results of the study showed that the degree of culpability imputed to, and the number of years in prison recommended for, the offender whose accomplice had escaped was considerably less than for the offender whose accomplice was captured. This makes no sense whatever from a commensurate deserts point of view:[1] they both robbed the store, and the fact that one had an accomplice who escaped should hardly result in his or her being held less culpable. Unless, that is, culpability is "an essentially metaphysical notion" (Gibbs, 1978) which by its very nature defies reliable quantification in any but gross categories.

To further examine the manner in which people form judgments about an offender's culpability, Monahan & Fuggiero (1980) conducted a study pitting predictions of recidivism — the *bête noire* of retributivists — against prior offenses as the determinants of criminal sentencing. To isolate further the factors that influence perceptions of culpability and investigate how they, in turn, affect beliefs about sentence length, they asked their respondents to record separately the sentence they would recommend taking only *moral desert* into account, taking only *societal protection* (i.e., predictive restraint) into account, and finally taking into account whatever they believed should be taken into account in imposing an *actual sentence*. The reasoning here was straightforward: to the extent that judgments of moral culpability are themselves *dependent upon* beliefs regarding risk of recidivism, moral culpability becomes less tenable as a self-sufficient alternative to predictive restraint in justifying criminal sentences.

Results showed that desert appeared to function as a *limiting* principle: beliefs about desert served to reduce the sentence subjects would have given on utilitarian grounds alone. Actual sentences recommended were an *average* or compromise between beliefs about moral desert and beliefs about public protection.

Most interestingly, however, predictions of recidivism affected not only those sentences recommended on utilitarian grounds, as would be expected. They also had a significant and profound effect on sentences in which the sole justification was to be moral culpability. Indeed, regardless of whether an offender had committed prior offenses, subjects perceived the offender with a 20% chance of recidivism as morally "deserving" a sentence slightly in excess of 1 to 2 years, while perceiving an offender with an 80% chance of recidivism as "deserving" a sentence of almost 5 to 6 years.

Finally, Riedel (1975) found that people tend not to take into account factors such as victim provocation in judging the seriousness of crimes. They tend to

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[1] The study could be viewed as confirming a common-sense view of "fairness" in that if one offender, through no virtue of his or her own, is "lucky" enough to escape sanction completely, then it would be "unfair" to his or her accomplice not to escape sanction at least partially, i.e., by receiving a sentence lower than would otherwise be given. Such a view of "fairness," however would appear conceptually relevant to the concept of commensurate deserts only if the determination as to who got caught and who escaped was a matter of conscious policy (i.e., discriminatory law enforcement) rather than chance. Otherwise, one could argue that, since most offenses are never cleared by an arrest, we should never punish those who are caught, out of fear of being "unfair" to them vis-a-vis their unapprehended partners in crime.

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assess crime seriousness "in ways that make unimportant inferences of whether the offender intended the act" (p. 208).

What we have, then, are empirical findings that people do *not* take into account what the commensurate desert principle says they *should* take into account in assessing seriousness (e.g., intent), and that they *do* take into account both factors that are irrelevant from a commensurate desert's point of view (e.g., escaped accomplices), as well as those that are explicitly *prohibited* (e.g., prediction). These findings do not bode well for those who would have punishment meted out on desert-relevant grounds alone. As Gibbs (1978, p. 295) has stated:

> A doctrine is not a complete basis for a punitive penal policy unless it at least *implies* an answer to this question: For the type of crime under consideration, what is the appropriate punishment? Unless one is willing to accept whatever is a just desert, the retributive doctrine implies no answer.

Likewise Bedau, while not wishing to disparage the principle of commensurate deserts "as though this principle were fraudulent or erroneous or trivial," believes:

> No one disputes the claim that a slap on the wrist for murder is too lenient and that a month in prison for overparking is too severe. It is common sense judgments like these that inspire the search for a principle such as the principle of commensurate deserts. What I have been arguing is that the retributivists' principle of commensurate deserts is not at present an objective, reliable way of going beyond such common sense judgments, so that sentencing authorities may rely on the principle and be secure in the belief that with it they can achieve retributively just sentences in practice (Bedau, 1977, p. 65).

To these empirical findings a proponent of the strict Desert Model might retort that "the public" is no doubt confused about many central concepts in the criminal law (e.g., *mens rea*) and yet this does not impede the use of these concepts in the day-to-day operations of the system. Perhaps all the findings do is cast doubt upon the wisdom of relying upon survey data to quantify deserved punishment. Is it possible that more "principled" arguments can be put forth that would yield agreement among knowledgeable persons as to the precise delineation of culpability and hence seriousness? This, too, does not appear to be the case, at least at the current stage of development of the Desert Model.

Gardner (1976), for example, hpted the undeveloped status of the concept of culpability in the Desert Model. The emphasis on "free choice" in the determination of culpability, he stated, leaves unclear whether criminal negligence or "strict liability" crimes could be punished at all under desert principles, since "free choice," as commonly understood, is not present. Indeed, "[T]he most significant weakness in *Doing Justice* theory is its failure to take seriously the concept of culpability" (Gardner, 1976, p. 806). Gardner, in this regard, would take the "whole character of the offender," including his or her "motives, powers, and temptations" (p. 804) into account in assessing culpability. "One who violates the law because of worthy motives, through less than average

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powers of self control, or in the face of special temptation is either not culpable at all, or less culpable than other offenders. The uniquely debilitating influences of social and economic deprivation are relevant in attending to the matters of motives, powers, and temptations" (p. 805). Greenberg and Humphries (in press) also attack the Desert Model because of its "neglect [of] the social situation of the criminal actor" in assessing seriousness and its effect of dismissing such topics as "the dynamics of the capitalist economy, the manner in which it allocates benefits and injuries among classes, races and sexes – and in so doing generates the structural conditions to which members of the society respond when they violate the law."

While some argue for considering the social situation of the offender in deciding his or her degree of culpability, others argue with equal fervor that justice demands a consideration of the effects of the sanction upon *future victims*, who do not "deserve" to be disadvantaged by recidivistic offenders.

> Retributivists, whether of the old or of the new variety, are totally uninterested in binding up the wounds of the victims. The only fairness retributivists are interested in is the fairness of deserts to be visited upon the offender; as for the victim, retributivists seem quite willing to let him fend for himself. This is a strange as well as an incomplete theory of justice in the full context of crime in society . . . It is too rarely noticed that retributivists in principle are fundamentally indifferent between the state of the world in which there is no crime, and the state of the world in which there is a wide variety of horrible crimes each of which is punished fully and exactly as retribution requires. Depressing the crime rate is no concern of the retributivist; neither is avoiding recidivism; he willingly leaves these concerns to the utilitarian, thereby revealing just how narrow are his interests in the overall social problem of crime and punishment. If justice or other moral principles dictate a concern about innocent victims and the innocent public, it is not thanks to the views held by retributivists (Bedau, 1977, pp. 68–69).

While the Desert Model acknowledges that crime control is an acceptable rationale for the existence of criminal sanctions in general and may play a role in setting the absolute level of criminal penalties, it denies crime control considerations a role in setting penalties in the individual case. The model does make exception for "a small class of especially fearsome cases" (von Hirsch, 1976, p. 126). The justification for this abrupt deviation from the previously inviolable principle of commensurate deserts is given in political rather than theoretical terms. "These cases will be so highly visible and evocative of public anxiety that arguably the pressure for isolating such persons would be impossible to resist in any event; and unless express authority to invoke predictive restraint is granted here, the entire structure of 'deserved' sentences could be distorted upward" (von Hirsch, 1976, p. 126). Predictive restraint for a few Charles Manson-types, in other words, is necessary "only for the purposes of safeguarding the general rule that the sentence should be deserved" (p. 131).

Public anxiety about crime, however, is not limited to crime committed by a few highly visible persons. It is a pervasive fear of victimization, regardless of

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the identity of the offender. For those, like Bedau, who view this public concern as legitimate, desert dictates that at least some concern be given to crime control in allocating individual punishments.

The principal impediment to arriving at social consensus – or even the presumably more informed consensus of criminal justice elites – on the culpability of individual offenders, therefore, is disagreement whether "justice" in the largest sense of that term requires a consideration of (a) the contribution of society to the production of the offender's past behavior, or (b) the effect of the offender's likely future behavior upon other members of society. Some emphasize the former consideration and argue that "justice" in the case of a socially deprived offender should lead to his or her being confined for a shorter period, for the same instant offense, than a non-deprived offender. Others emphasize the latter consideration and argue that "justice" in the case of an offender with a high probability of victimizing innocent persons again should lead to his or her being confined for a longer period, for the same instant offense, than an offender with a low probability of so doing. And still others, like the majority of the Committee for the Study of Incarceration, while expressing sympathy both for disadvantaged offenders and the victims upon whom they will visit disadvantage, argue that "justice" in the largest sense is beyond the reach of the criminal justice system. That system would do best to ignore both the offender's claim to reduced confinement and the potential victim's plea for increased protection.

Just Deserts as Social Norms

The conclusion I would draw from both the empirical evidence and the conceptual arguments regarding culpability and hence crime seriousness and the sentencing severity is that decisions regarding the "just" sentence in any given case are by and large normative ones.[2] Some will take into account very different things than others (such as social environment or future victims). There is no more principled way to determine who is the more "correct" in the assessment of justice than there would be in the assessment of beauty. In a given culture at a given time, norms will develop concerning the range of sentences that the majority feel are just for given criminal conduct. These ranges will be different in different cultures, and will change over time within the same culture. Thus the majority of people in the United States, unlike those in some other cultures, believe that cutting off the hand of a thief is an unjustly severe punishment, and have recently come to believe that lengthy prison terms for marijuana possession are unjust.

The crucial question of how broad or narrow a range of sentences justice allows thus transforms into an empirical question concerning the breadth or

[2] I do not wish to disparage those who seek to identify universal and invariant stages of moral reasoning (e.g., Kohlberg). Indeed, I believe in an intuitive way that such absolute and non-normative principles must exist. The Inquisition or the Holocaust were not "just" despite the fact that a majority of responsible decision-makers at the time found them to be within the range of their ethical tolerance. But the state of research and theory on moral reasoning is so undeveloped and controversial that it can provide little, if any, guidance to the task of criminal sentencing.

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narrowness of the existing social norms. The upper limit of deserved punishment thus may be said to be reached just before a majority of the responsible decision-makers (e.g., members of a Sentencing Commission) say "too high;" the lower limit just before they say "too low." The width of the resulting range may vary with the type of crime. For some crimes the distance in severity between the upper and lower limits of social acceptance may be quite narrow, for others it might be broader.

To stipulate that the *majority* of decision-makers set the upper and lower limits would seem to assure that these limits, however broad, would place a significant constraint on the allocation of punishment. The problem with a procedure such as the Model Penal Code was that it set the lower limit at that point where virtually *everyone* would agree that any lower was "unjust," and the upper limit at that point at which virtually everyone would agree that any higher was "unjust." Taking a simple majority vote would necessarily result in a narrower range than expanding the upper and lower limits to include minority views.

Assume, for example, a Sentencing Commission of twelve persons representing an attempt at a cross-section of various interest groups. The group is asked: "For a second conviction of rape (in which no additional physical harm is done to the victim) what is the *least* severe sentence you could impose without violating your beliefs about justice?" Four persons say 1 year, 5 persons say 2 years, and 3 persons say 3 years. The lower limit of the deserved sentence is thus set at 2 years: to go lower than 2 years would violate the sense of justice of 8 of the 12 members. The group is then asked: "For the same case, what is the *most* severe sentence you could impose without violating your beliefs about justice? Two persons say 6 years, 3 persons say 5 years, 3 persons say 4 years, and 4 persons say 3 years. The upper limit of the deserved sentence is thus set at 4 years: to go higher would violate the sense of justice of 7 of the 12 members. With the range thus set by desert at 2–4 years, other factors could come into play to choose within this range.

My own position in regard to choosing within this normative rage of deserved sentences is to agree with von Hirsch that the sentencing phase of the criminal justice system seems hardly the place to mount major programs of social restructuring, or even to evaluate the effects of an existing social structure on an offender's "whole character." But it does not offend *my* sense of justice to consider in this limited way what effect a given offender's sentence likely will have on others after his or her release. Nor, according to the Monahan and Ruggiero (1980) study, does it offend most other people's sense of justice. Given that (a) by definition, the majority of responsible decision-makers (e.g., members of the Sentencing Commission) believe that just deserts will not be flaunted by any sentence imposed within the range, and (b) that there would be an empirically demonstrable reduction in the suffering of those who are, by all accounts, "innocent" victims if offenders with a high probability of serious recidivism were sentenced at a higher level of the range than those with a low probability of recidivism. I see no reason why we should not opt for a sentencing scheme which maximizes utilitarian benefit at the same time it satisfies the dictates of desert, as far as we can determine what those dictates are.

For those who agree with these sentiments, the questions become which fac-

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tors associated with criminal recidivism should be used to select a sentence from within the prescribed range, and how much they should affect the sentence imposed.

I would offer as a preliminary guide the principle that the only factors that can be used in sentencing are those whose existence and relationship to recidivism have been demonstrated to an acceptable standard of proof in a legal proceeding. This principle would insure that the factors relied upon to influence a sentence in the name of predictive restraint are actually present in the case at bar, and actually do relate to predictive restraint. It would exclude sentencing on the basis of hearsay, and would force the state (in the case of increasing a sentence otherwise given) or the defendant (in the case of decreasing a sentence otherwise given) to present empirical evidence that the factors relied upon are actuarially associated with recidivism. The standard of proof is left open since that is currently under debate in some areas (e.g., the U.S. Supreme Court has recently decided that the standard of proof in civil commitment need only be "clear and convincing evidence," *Addington* v. *Texas*, 1979). Likewise, the nature of the legal proceeding is unspecified, since a juvenile court, in the case of juvenile crime, or a trial-like prison hearing, in the case of crime while in prison, could suffice if the procedureal protections were sufficient.

This principle would exclude the use of adult or juvenile arrests that do not result in an adjudication of guilt, and any information from the mental health system or elsewhere that was not tested in a legal proceeding. For example, "emergency" civil commitment for violent behavior (typically a three-day commitment) does not require judicial involvement in most states, and thus would be excluded, whereas longer term commitment for "dangerousness" does require a hearing or trial and so evidence of it would be permissible to introduce. In order for a history of commitment on the basis of dangerousness to influence a sentence, the state, under this principle, would have to prove (a) that the defendant in fact had such a history; and (b) that such a history, in fact, increases the probability of recidivism (and therefore the need for predictive restraint).

How Much to Rely on Prediction

How large a role should be given to prediction in this modified desert model? As von Hirsch and Hanrahan (1979, p. 19) noted, it will not be easy to draw a principled demarcation between the point at which commensurate deserts ends and predictive restraint begins. If one accepts that, despite the vaguaries alluded to above, it is possible to arrive at upper and lower bounds for sentence length by recourse to the principle of commensurate deserts, then those bounds provide the first constraint on the degree to which prediction can influence sentencing: regardless of how "dangerous" an offender was predicted to be when released from prison, he or she could be kept no longer than the upper bound set by commensurate deserts, and regardless of how safe, released no sooner than the lower bound.

But more specificity is required. In particular, the expected accuracy of the prediction (e.g., the false positive rate) must influence the degree to which it is taken into account. One cannot jump an offender from the lower to the upper

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bound specified by commensurate deserts if he or she merely has *some* higher-than-normal probability of recidivism. Perhaps the notion of proportionality, so influential in the development of commensurate deserts, could prove useful in the area of prediction as well. It would lead to the following principle: *Within the range set by the seriousness of the crime committed, the severity of an offender's sentence shall be proportional to the degree he or she reliably and validly can be predicted to offend again.* This would necessitate developing an equation to *transform* the degree of predictive accuracy into the degree to which the sentence would be augmented. For example, a 40% probability of recidivism could equal moving 25% between the lower and upper bounds set by commensurate deserts. The principle would also necessitate setting a common definition of "recidivism" (e.g., a 100% probability of jay-walking should be irrelevant; perhaps "felony conviction" would be an acceptable common denominator).

Take the example previously given, of a person convicted of second offense rape. On the basis of the normative test of desert proposed, presume most responsible decision-makers would agree the offender deserves at least 2, but no more than 4 years in confinement. This would set the upper and lower limits on punishment. On the basis of past behavior demonstrated to an accepted legal standard of proof, it can be actuarially concluded that the offender has a 50% chance of being reconvicted for a felony (any felony) within 3 years after his or her release. Assume a simple transformation rule such that the probability of recidivism is directly proportional to the degree to which the sentence shall vary between the bounds set by commensurate deserts. The sentence the offender would receive would then be 3 years — 2 to 4 years because of commensurate deserts and half the difference between the two due to the prediction of recidivism.

I have no doubt that much further development will be necessary before a workable framework for prediction in sentencing can be achieved. But "the assessment of predictive selection must take into account the nature of the plausible alternatives to predictive selection" (Underwood, 1979, p. 1418), and the principle of commensurate deserts, in its current state of development, is simply incapable of carrying the entire weight of criminal sentencing. von Hirsch (1978, p. 623) acknowledges that "a satisfactory theory of scaling seriousness has not yet been devised." The reason he gives is that *"nobody has yet seriously tried to construct such a theory.* Until philosophers and penologists give this task the requisite effort, it is hard to judge the prospects of success" (pp. 623–24, italics in original). It is hard indeed. Yet without such a theory, "commensurate deserts" is little more than a banner under which those who would reform the more egregious abuses of discretion in sentencing can rally.

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"PRISON BEHAVIOR AND RELEASE PERFORMANCE"

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PRISON BEHAVIOR AND RELEASE PERFORMANCE

Empirical Reality and Public Policy

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It is argued widely that an inmate's behavior while in prison is not related to his or her behavior after release. This putative lack of a relation is a point set forth in debates about discretionary release from prison by parole boards. This article reviews the empirical status of the prison behavior and release performance controversy and offers new data from the federal jurisdiction. The results indicate that there is some relation between officially recorded institutional infractions and postrelease infractions, once controls for a priori risk are established. The fact that some postsentencing information may be related to behavior after prison raises difficult policy issues that are not addressed by the common assertion of no relationship. Among these issues are the propriety and fairness of predictive judgments per se, the proper locus of authority for release decision making, and alternative uses of predictive information in corrections. The findings here suggest that more intensive study of the relation between prison behavior and release performance is required.

Few policy issues in criminal justice stir more controversy than does the broad question of imprisonment. Recent major work in the field has been concerned with such questions as who should go to prison and for how long, and what should happen to them while they are there (Morris, 1974; von Hirsch, 1976; Fogel, 1975). This article addresses one aspect of the impri-

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AUTHORS' NOTE: *We would like to thank the U.S. Parole Commission for making available the data used in this study. Points of view or opinions stated are those of the authors and do not necessarily represent the views of the Commission.*

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sonment issue—the role an inmate's institutional behavior should play in the parole board's decision to release him or her from prison. The issues surrounding discretionary release are matters of considerable controversy and they are in need of investigation.[1]

The rationale that supports delayed penalty setting and the actual operations of parole release decision making have been the objects of much recent criticism. This criticism takes many forms. Some who question the rationale for a delayed release decision argue that such discretion is premised on theoretically and empirically faulty notions of rehabilitation and on nonexistent behavioral expertise of parole board members. They argue that there is only slight evidence for the effectiveness of institutional treatment programs and that the ability to predict future conduct, an ability necessary to effectuate rehabilitative goals, is too error-prone (von Hirsch, 1976; Morris, 1974). Furthermore, it may be that the parole release decision is unnecessary, even if predictive sentencing were accepted, because only factors known to the judge at the time of sentencing are of any consequence. Parole release decision making has also been criticized because it is a usurpation of judicial authority, because it fosters inequities, and because it creates unwarranted and counterproductive uncertainties in the lives of inmates. In order to remedy the inequities and uncertainties, critics of the present system have begun to explore alternative mechanisms for time-served decisions that would lodge authority for sentencing decisions with the legislature and the judiciary (see, generally, von Hirsch and Hanrahan, 1979; Hoffman and Stover, 1978; Stanley, 1976; Citizen's Inquiry on Parole and Criminal Justice, 1975; Morris, 1974).

However, even critics of extended indeterminacy see a role for a two-stage decision-making process in which the parole board makes time-served decisions *after* a short period of incarceration *within* the constraints set by the sentencing judge. Some argue that such a system, which is currently being used in the federal jurisdiction, will mitigate some of the harshness of judicially imposed penalties (von Hirsch and Hanrahan, 1979). Others argue that review by parole agencies will function to reduce disparity in sentencing (Gottfredson, 1979a, 1979b). Finally, and

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of most relevance to the study reported here, it may be argued that release discretion is necessary if an inmate's institutional behavior is to be a factor in determining the length of sentence.

An evaluation of an inmate's institutional adjustment may be useful for two reasons. First, some postsentencing discretion may be required for the maintenance of prison discipline. That is, if release is conditional on prison behavior, a general deterrence function within the institution may be served. Although some opponents of parole release discretion grant the importance of this order-maintenance function, they argue that the discretion provided parole administrators for accomplishing this purpose is too broad (see, for example, Morris, 1978; Hoffman and Stover, 1978; Dawson, 1969). Others argue that such decisions are more legitimately judicial ones and thus should be left to the province of the criminal courts or, at a minimum, to the province of an independent reviewing body specifically empowered to perform this function (von Hirsch and Hanrahan, 1979).

Second, the ability to comply with institutional regulations may be an indication of the ability to avoid illegal conduct upon release. Because prison behavior is unknown at the time of judicial sentencing, postsentencing discretion is required to accommodate a knowledge of prison rule infraction in the time-served decision. Opponents of this reasoning attack it on two grounds: (1) that it is unfair to extend the duration of punishment for violations that have not been judicially adjudicated; and (2) that the existing literature does not support the contention that prison behavior is significantly related to parole success (von Hirsch and Hanrahan, 1979; Morris, 1974). In reference to this second point, Morris (1974: 35), for example, has written:

> Protracted empirical analysis has demonstrated . . . that *predictions of avoidance of conviction after release are no more likely to be accurate on the date of release than early in the prison term.* . . . Neither the prisoner's avoidance of prison disciplinary offenses nor his involvement in prison training programs is correlated with later successful completion of parole or with later avoidance of a criminal conviction [emphasis in original].

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Similarly, von Hirsch and Hanrahan (1979: 32) write:

> Some studies have measured how prisoners' behavior during confinement correlates with recidivism. . . . These studies generally find little correlation. This is not surprising, given that living conditions in the institution are so different from those outside.

The purpose of this article is to study empirically whether time-served decisions by parole boards based on institutional misconduct are predictive of parole success. This study should overcome some of the shortcomings of earlier research, and will suggest directions for use of this empirical knowledge in parole release discretion.

PRIOR RESEARCH

Despite claims that institutional conduct is not predictive of postinstitutional success, few studies have examined the relationship between institutional and postinstitutional behavior. The available research may be classified broadly into two groups. The first consists of implicit assessments of the predictive value of institutional variables. These studies have as their central aim the development of equations that optimize the predictability of parole success; the importance of institutional misconduct for such a purpose is judged by whether it weighs heavily in such equations. Morris (1974: 35) relied upon such studies to support his statement cited above.

The second group consists of explicit studies of the bivariate association between measures of institutional misconduct and parole success. Less frequent than the first category of research, these studies are concerned with seeking relationships between the number of rule infractions a prisoner commits while in the institution and the likelihood of recidivism. Von Hirsch and Hanrahan (1979: 32) relied upon studies of this type to support their statement cited above.

There is, however, some question as to whether either class of study is capable of assessing the extent to which institutional

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misconduct is prognostic of future illegal involvement. With respect to the first group of studies, the extensive research on parole prediction suggests that the most discriminating indicators of recidivism are known prior to incarceration: age, previous convictions, type of current offense, and age at first conviction (O'Leary and Glaser, 1972; Gottfredson, 1970). However, the fact that the equations that have been developed do not contain items relating to institutional behavior does not validate the assumption that it is unrelated to parole success. To begin with, institutional misconduct items may have not been studied as predictor items. Many of the equations that have been developed were designed to study the effects of treatment during incarceration and, as a logical consequence, explicitly ignored factors not known at the time of institutionalization. Furthermore, where institutional misconduct items have been studied, they may have correlated substantially with other more powerful predictors. As these other predictors are selected for inclusion in prediction equations, a large portion of the information value of institutional behavior becomes redundant. In addition, the relative infrequency of serious institutional misconduct, when correlated with the also relatively infrequent variable, parole failure, may yield small correlation statistics. Thus such items may not distinguish themselves in the commonly used multiple-correlation methods of prediction, and the extent to which they are related or can bring about a gain in predictive efficiency is unknown.

The second class of study looks at the bivariate association between institutional misconduct and parole performance. Drawing upon data from the federal system, O'Leary and Glaser (1972) found a slight relation between the seriousness of an inmate's disciplinary record and recidivism rate. First-time incarcerated offenders were discovered to have a lower recidivism rate than repeat offenders. O'Leary and Glaser's analysis revealed that the relationship between prison conduct and recidivism was not significant for first-time incarcerated offenders. However, for those with records of prior confinement, inmates with unsatisfactory prison conduct had a 58% reimprisonment rate, while those

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with satisfactory prison conduct had a 38% reimprisonment rate (O'Leary and Glaser, 1972: 157-158). In a separate analysis of the Federal Youth Corrections Act, O'Leary and Glaser (1972: 157-158) found that for persons with fifth-grade or lower educational achievement and no institutional commitments prior to their sixteenth birthday, a prison disciplinary record was predictive of high parole violation rates.

In another study of this type, Jaman (1970) investigated the relationship between behavior during the first year in prison and behavior during a two-year period following parole. The sample in this study was 330 male felons who were paroled in California between May 1965 and March 1969. The number of prison infractions was an independent variable and parole outcome, based on official police records and Adult Authority records of parole violations, was the dependent variable. The sample was divided into two groups: new admissions and readmissions (N = 217 and 113, respectively). Tabular analysis revealed that for first-time parolees institutional misconduct was not related to parole outcome. In contrast, for reparolees, disciplinary infractions were modestly related to return to prison. Thus Jaman likewise noted a differential relationship between disciplinary outcomes and parole outcomes.

The main problem with most of the research cited here is the failure to take account of the relationship between institutional misconduct and a priori risk when predicting postparole behavior. Misconduct in prison and postparole behavior may well be explained by preprison factors that predict both (Lipton et al., 1975: 87). Such an explanation would have implications for the issue of delayed penalty setting: if a priori risk accounts for the relationship, the rationale for delay in setting the prison term until after some period of observation in the institution loses credibility. Because the studies discussed above did not confront this problem directly, the additional information that institutional behavior may provide about parole risk is unknown. Similarly, the implicit assessments based on parole prediction studies leave this question unanswered. Therefore, there is a need to examine the relation of institutional misconduct to postprison

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behavior while controlling for factors associated with risk; the aim of this study is to accomplish such an examination.

THE PRESENT STUDY

The data used were originally collected as part of a large study on parole decision making.[2] They derive from random samples of releases from federal institutions during 1970 and 1972, but exclude persons sentenced under the Federal Youth Corrections Act and the Narcotic Addict Rehabilitation Act. The final sample consists of 2537 cases.[3]

Several measures of both the type and frequency of officially recorded prison misconduct were analyzed.[4] Three types of misconduct were distinguished: assaultive infractions, escape history, and prison punishments. Any action involving the inmate as a perpetrator of an injury or threat to injure was defined as an assault. If an accusation was followed by a finding of not guilty, it was discarded. The number of separate assaultive incidents noted for each inmate since date of admission was coded. Escape history referred to any record of escape or attempted escape. Only the presence or absence of such a record was coded. Prison punishment, which is the most general indication of institutional misconduct, was defined as all actions, other than dismissal, on charges of prison rules violations resulting in withholding of privileges, segregation, isolation, loss of good time, suspended sentence, or any other deprivation. This definition includes assaultive infractions and escape histories that resulted in formal punishment and excludes reprimands or misconduct reports. This measure gives an indication of officially noted rules infractions deemed serious enough to warrant some deprivation for the inmate. The number of separate incidents of prison punishment taken for each inmate beginning with the date of admission was coded. Among the subjects studied, 3% (77) had at least 1 assaultive infraction, 3% (66) had an escape history, and 18% (451) had at least 1 prison punishment.

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The two-year follow-up data were compiled from the parole performance records of the U.S. Parole Commission, supplemented by conviction records from the Federal Bureau of Investigation. Failures were defined as: (1) absconders; (2) those returned to prison on technical violations; (3) those returned to prison in lieu of prosectuion for a new major offense; (4) those recommitted to prison on a new offense; (5) those continued on parole with conviction for a new major offense; (6) FBI report of parole or mandatory release violation with return to prison; (7) FBI report of a new conviction. Among the subjects sampled, 605 (24%) were defined as failures and 1932 (76%) were considered successes. Because the subjects were all part of a release sample, the sample included parolees, mandatory releasees, and those discharged without supervision upon expiration of their sentences. The addition of the FBI data to the Parole Commission records allowed for both a comprehensive sample and more complete data than are typically available for this type of research.

A priori risk was measured by the Salient Factor Score developed for use by the U.S. Parole Commission to help determine parole risk. The Salient Factor Score has two major advantages for the present research. First, it has been shown to have considerable and lasting predictive validity (Hoffman et al., 1978; Hoffman and Beck, 1974, 1976). Second, it is currently used by the U.S. Parole Commission in making decisions concerning the length of inmates' incarcerations. Thus this study can shed light on the issue of whether once the Parole Commission considers parole risk (by virtue of the Salient Factor Score) any additional information about future behavior can be gained by considering institutional misconduct.

The Salient Factor Score consists of seven items: prior convictions; prior incarcerations; age at first commitment; whether commitment offense involved auto theft or forgery/larceny; whether parole has ever been revoked or the inmate has committed a new offense on parole or the inmate was currently sentenced as a probation violator; history of heroin or opiate dependence; and verified full employment (or full-time school attendance) for at least six months during the last two years in the

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community. Scores for the subjects in this study were computed and categorized according to the coding procedure outlined in the Parole Commission's *Guideline Manual*.[5] Subjects were classified into the four categories used by the Parole Commission in their operational release guidelines. The categories and proportions of the sample falling into each were as follows:

Category	Score	Percentage	Parole Failure During a 2-Year Period
very good	9-11	8%	2%
good	6-8	29%	14%
fair	4-5	30%	25%
poor	0-3	32%	37%

RESULTS

Table 1 displays the bivariate associations between the measures of institutional misconduct and postprison success, as well as the relation between outcome and a measure derived by taking the sum of the misconduct variables. For each measure, the hypothesis of no difference in outcome for those differing on the misconduct variables can be rejected on the basis of the obtained chi-square statistic. For the assaultive infractions variable, those without an officially recorded assault were successful 77% of the time, whereas those with an assault record were successful only 49% of the time. For the escape history and prison punishment variables, a similar pattern is evidenced: Those subjects with no record of escape were successful 77% of the time, while those with an escape record were successful 50% of the time; those without a record of prison punishment were successful during the 2-year period 80% of the time, but those with a record only 58% of the time.

Also shown in Table 1 is the discrimination in success rates achieved by summing the various inmate misconduct items and tabulating them in terms of 0, 1, or 2 or more infractions. Here, too, the hypothesis of no differences is rejected ($\chi^2 = 120.4$, 2 df, $p < .01$). The proportions of subjects in each category who

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TABLE 1
Relation of Prison Misconduct to Postprison Performance, Two-Year Follow-Up, Federal Inmates, 1970, 1972 (N = 2537)

Assaultive Infraction			
No	77 (1894)[a]	23 (566)	$\chi^2 = 29.9$ 1 d.f., $p < .01$
Yes	49 (38)	51 (39)	$\phi = .11$
Escape History			
No	77 (1899)	23 (572)	$\chi^2 = 24.1$ 1 d.f., $p < .01$
Yes	50 (33)	50 (33)	$\phi = .10$
Prison Punishment			
No	80 (1671)	20 (415)	$\chi^2 = 99.7$ 1 d.f., $p < .01$
Yes	58 (261)	42 (190)	$\phi = .20$
Summary Score			
None	80 (1655)	20 (401)	
One	63 (161)	37 (96)	$\chi^2 = 120.4$ 2 d.f., $p < .01$ $v = .22$
Two or More	52 (116)	48 (108)	

a. Numbers in parentheses are the cell frequencies.

successfully complete the 2-year follow-up declines from 80% to 63% to 52% as the number of infractions increases from 0 to 1 to 2 or more.

Table 2 presents the relation between the institutional misconduct items and postrelease performance, controlling for Salient Factor Score. For the assault and prison punishment items,

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TABLE 2

Relation of Prison Misconduct to Postprison Performance, by Salient Factor Score, Two-Year Follow-Up, Federal Inmates, 1970, 1972

	% Successful by Salient Factor Score Category			
	Poor	Fair	Good	Very Good
Assaultive Infraction				
No	64[a] (508)	76[b] (566)	86[c] (615)	98[d] (205)
Yes	42 (14)	48 (13)	57 (8)	100 (3)
Escape History				
No	63[e] (511)	75[f] (566)	868 (614)	98 (208)
Yes	33 (11)	45 (13)	69 (9)	— (0)
Prison Punishment				
No	60[h] (437)	78[i] (497)	89[j] (548)	98[k] (189)
Yes	47 (85)	60 (82)	66 (75)	95 (19)
Summary Score				
None	69[l] (435)	78[m] (490)	89[n] (543)	98[o] (187)
One	52 (52)	60 (47)	77 (49)	100 (13)
Two or More	40 (37)	61 (42)	55 (29)	89 (8)

a. χ^2 = 5.6, 1 d.f., $p < .02$, $\phi = .09$.
b. χ^2 = 9.3, 1 d.f., $p < .01$, $\phi = .12$.
c. χ^2 = 7.1, 1 d.f., $p < .01$, $\phi = .11$.
d. χ^2 = 2.7, n.s.
e. χ^2 = 12.0, 1 d.f., $p < .01$, $\phi = .13$.
f. χ^2 = .62, n.s.
g. χ^2 = 1.7, n.s.
h. χ^2 = 25.9, 1 d.f., $p < .01$, $\phi = .18$.
i. χ^2 = 19.4, 1 d.f., $p < .01$, $\phi = 16$.
j. χ^2 = 38.2, 1 d.f., $p < .01$, $\phi = .23$.
k. χ^2 = .002, n.s.
l. χ^2 = 36.2, 2 d.f., $p < .01$, $v = .21$.
m. χ^2 = 21.6, 2 d.f., $p < .01$, $v = .17$.
n. χ^2 = 51.6, 2 d.f., $p < .01$, $v = .27$.
o. χ^2 = 3.4, n.s.

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similar relations were found. For both items, statistically significant (generally less than .01) differences exist among categories for those subjects in the poor, fair, and good risk groups as measured by their Salient Factor Scores; for those in the very good a priori risk group, the differences are not significant. Thus for the assaultive infraction item the differences between those having assault records and those who did not are 22% for the poor risk group, 28% for the fair risk group, and 29% for the good risk group. For the prison punishment item, the differences between those with and those without such punishment records are 21% for the poor risk group, 18% for the fair risk group, and 23% for the good risk group. These differences appear to be sizable, particularly when it is noted that these comparisons are made *within* empirically validated risk categories. It should be pointed out, however, that many of the cell sizes are quite small.

In contrast with the patterns just described, the escape history item yields statistically significant differences only among subjects in the poor risk group. The difference in postrelease success between those in this group with no history of escape during the current confinement and those with such a history is 32%. The differences within the other risk groups, although consistent in direction, fail to achieve statistical significance at the .01 level of confidence.

Also shown in Table 2 are the results for the summation scale. Again, the first 3 risk groups demonstrate statistically significant ($p < .01$) differences in success rates. Overall, in the poor risk group, the proportion succeeding during the 2-year period declines from 69% to 40%. For the fair risk group the decline is from 78% to 60%, and for the good risk group from 89% to 55%.[6]

DISCUSSION

The results of this study suggest that institutional behavior is related to postinstitutional success. This finding is consistent with previous research on the issue. As summarized by O'Leary and Glaser (1972), Stanley (1976), and Lipton et al. (1975), studies of

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the bivariate association between institutional misconduct and parole success have generally found at least small, and generally moderate, differences in the future success rates of inmates who differ according to institutional misconduct. The results reported here suggest that such differences remain even after a priori risk is taken into account. However, some of the limitations of this research need to be underscored.

The sample used in this research was drawn from the federal prison system. Because of major differences between the incarcerated populations of federal and state systems, one cannot readily generalize the results of this study. Although the control for risk using statistical prediction, together with the generally consistent results found here, may suggest that similar patterns would prevail, further research is required. One direction would be to identify similarities and differences in the kinds of incidents that occur and their prevalence. If the differences in institutional misconduct between federal and state systems is significant, it may limit the applications of the findings reported here.

As noted earlier, the independent, dependent, and control variables in this study were drawn from official records. The independent variables were relatively rigorous in that only officially recorded and punished behavior was studied. Nonetheless, the measures of disciplinary infraction refer to a broad range of inmate misbehavior. As for the outcome measure, it did not rely solely on the Parole Commission's data, but included FBI follow-up data as well. If conditional release revocation decisions are influenced or predicated on knowledge of an inmate's institutional behavior, or if release supervision is increased for those with prison misconduct records, then the associations discovered here may be spurious. Given the administration structure of the federal Parole Commission, however, this would not seem likely.

The technique used for controlling for a priori risk is also not without limitations. Although the Salient Factor Score has several advantages, it is possible that factors exist that influence both the number of misconducts in prison and the postprison outcomes that are not "held constant" with the Salient Factor

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Score. One factor may be time served in prison. Past research suggests that length of incarceration may affect the probability of parole success (Gottfredson et al., 1973, 1977), and the incidence of prison misconduct may also be related to length of institutional stay.[7] Larger samples than those used in this study would be required in order to test this hypothesis rigorously.

The current debate surrounding discretionary release by parole boards addresses several concerns in addition to the predictive value of information available only after sentencing. Concern about the proper goals to be pursued by the criminal law, about the proper locus of authority for fixing state sanctions, about procedural fairness, and about the potential for abuses of discretion are all central to this debate. To the extent, however, that the empirical realities of forecasting future offenses are of concern—and the sources cited in opening of this article indicate that they are—then these results, when read in light of prior research, are capable of informing this controversy.

For the federal system, at least, these results suggest that the Parole Commission should be able to make more accurate forecasts of future behavior than can the sentencing judge. To the extent that such forecasts are desirable and that the differences found here are of sufficient magnitude, these results can be construed to be supportive of some postsentencing discretion in release from confinement.

At the same time, empirical studies confirming this association are only part of the calculus that needs to be considered in justifying this rationale. The broader calculus involves a dynamic balancing of potentially conflicting utilitarian and moral goals. Such a balancing task is indeed complex, and it requires that difficult public policy decisions be made.

Studies such as this one may help to identify groups of potential recidivists; they cannot indicate what should be done next. Predictions of recidivism are desirable in order to lessen its occurrence; the question is how to accomplish this. Certainly it is not necessary to argue that because prison misconduct is related to postrelease performance that such information must affect the time-served decisions. These include modifications in community

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supervision and treatment programs, and alterations in institutional arrangements. None of the available choices may be superior in all situations; a great deal remains to be determined regarding the effectiveness of each approach. Accordingly, it is necessary to explore and evaluate the various courses of action that may be available. In the absence of such information, rational public policy decisions become all the more difficult.

From a broader perspective, there is a need to acknowledge the many considerations that are involved. If extended incarceration is chosen as a correctional policy, this raises the moral and empirical issues that are generally associated with incapacitation. That is, one must weight the costs of liberty deprivation for those persons erroneously predicted to be recidivists, the false positives, against the costs of future crimes to the community. The inmate's interest in not becoming a false positive is surely great. The interests to the community may also be great, but clearly not all predicted events have the same trade-offs with respect to the false positive issue (Wilkins, 1976). Two factors would seem to be of major importance: (1) the type of criminal behavior predicted (forcible rape and check forgery do not have equal weight in such a balancing task); and (2) the probability of its occurrence (a 10% probability and a 90% probability may have different significance for the balancing task). Thus, with respect to any correctional policy based on extended incarceration, the procedural safeguards provided, the behavior being predicted, and the accuracy of the prediction are all relevant.

To the extent that the parole release decision is made contingent upon an inmate's institutional misconduct, procedural requirements become important. Such a contingency may influence the propensity, among prison staff, to report various inmates for disciplinary infractions. If the type of inmate reported for institutional misconduct changes, so too might the empirical basis for a relation between such reports and future behavior. Consequently, both the potential for a shift in the discretion to determine the length of incarceration and the impact that this can have on the empirical basis supporting such discretion needs to be considered.

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The research reported here suggests that parole boards may improve their ability to make accurate judgments on the basis of postsentencing information. The denial of such an ability may not only be inconsistent with the evidence, but may also obviate the need to surface the critical policy debates of propriety and effectiveness noted above. Clearly, this study suggests the need for continued investigation in this area. The first question is whether the results obtained here can be generalized. Future research might also follow up O'Leary and Glaser's (1972) work and address the apparently differential relationship of misconduct reports to inmate characteristics. Future research might also attempt to identify those behaviors that result in disciplinary infractions. It might attend more specifically to the types of behavior being predicted (for example, violent or nonviolent) and the probability of occurrence associated with each type. No doubt this will require very large samples, but such studies would be valuable in developing public policy recommendations in criminal justice.

NOTES

1. For analytical purposes the parole process can be partitioned into the discretionary release phase and the supervision phase. The first involves the decision as to how much time should be served before release from prison. The second involves aftercare services, supervision, and revocation. This article deals explicitly only with the release function of parole. For general commentary on supervision, see von Hirsch and Hanrahan (1979).

2. The data used in this study were collected as part of a parole decision-making project directed by Don M. Gottfredson and Leslie T. Wilkins in collaboration with the U.S. Board of Parole. Their permission to use the data is greatly appreciated. The coding procedures and definitions of terms are reported in Gottfredson and Singer (1973). The proportion of cases drawn by year are as follows: For 1970, 50% of the cases between January and June and 20% of the cases between July and December were randomly selected, resulting in 2497 cases; for 1972, 30% of the cases between January and June were randomly selected, resulting in 1011 cases. The sample was drawn prior to the adoption by the Parole Board of the guideline system (see Gottfredson et al., 1975).

3. There were 106 cases excluded because of lack of follow-up information.

4. Reliability estimates for the data used may be found in Beck et al. (1973).

5. See U.S. Parole Commission Research Unit (1977). Limitations in the current data set have required that minor variations from the official U.S. Parole Commission coding procedures be made for some variables. The prior convictions variable included an "other"

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category that may contain a small number of noncountable offenses. Furthermore, if the offender had a conviction-free record for 20 consecutive years it was not possible to eliminate convictions prior to this period. For the variable that includes previous parole performance it was only known if parole had been revoked. It was not known if a sentence to incarceration for a new offense was imposed and parole was not revoked. For commitment offense involving an auto theft or check forgery this could only be ascertained if the inmate was convicted of these offenses. For the verified employment variable, if the inmate was a student or unemployable for 75% of the previous 2 years the inmate was given a score of 1.

6. We also analyzed the relation between disciplinary infractions and release performance *excluding* the escape history and assaultive infractions items from the prison punishment variable. It may be argued that escape and assault infractions—adjudicable offenses—are not the proper behaviors of concern to the delayed-penalty-setting argument. When this was done, in general, both the bivariate association and the associations controlling for Salient Factor Score remained (data not shown in tabular form). Thus the percent successful ranged from 80% (N = 1671) to 62% (N = 177) to 51% (N = 64) as the number of prison punishments (excluding assault and escape) went from 0 to 1 to 2 or more (X^2 = 107.9, 2 df, $p < .01$). Significant differences ($p < .01$) in the same direction as those reported in the text were found for the first 3 risk groups, while the very good risk group showed no relation.

7. In order to explore this hypothesis the sample was divided into 2 groups on the basis of time served: those serving less than 18 months and those serving 18 months or more. The relationship between the summary measure of disciplinary infractions and release performance was examined for each group, controlling for the Salient Factor Score. The categories of the Salient Factor Score used as controls were poor (0 thru 3), fair (4 and 5), and good/very good (6 thru 11). The analysis revealed that with one exception the relationship between prison misconduct and release performance was statistically significant ($p < .02$) and consistently in the direction reported in the text. The exception was the group of inmates serving less than 18 months and having a fair Salient Factor Score. These results suggest that the relationship between prison misconduct and release performance may hold even when the effects of Salient Factor Score and length of imprisonment are taken into account.

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"RISK AND THE TIMING OF RECIDIVISM IN THREE COHORTS OF PRISON RELEASEES"

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RISK AND THE TIMING OF RECIDIVISM IN THREE COHORTS OF PRISON RELEASEES

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ABSTRACT

In recent years several methods have been developed to assess the timing of recidivism among offenders released from correctional programs. These methods have been used for some time in biomedical and engineering sciences, but applications to the study of criminal recidivism are relatively new. In this article, one of these methods, survival analysis, was used to examine the comparative performance of three groups of offenders released from a state prison system and followed for five years after release. The comparison of survival distributions showed that parolees failed at a slower pace than inmates released by conditional release or by the maximum expiration of the term. These findings were maintained when the a priori risk of recidivism was controlled, suggesting that selection effects were not wholly responsible for the more favorable performance of the parole group.

In the second part of the study, the survival distributions for the parole group were compared across risk levels. The findings suggested that if a critical period of probability of failure exists, the timing of this period varies with characteristics of the offender.

The implications of the findings for resource allocation, correctional population and program planning, parole policy, and program evaluation methodology are discussed.

Advances in the conceptualization and measurement of criminal recidivism have been painstakingly slow in coming, and the utilization of these advances by researchers has lagged even further behind. The reluctance of researchers to employ new and perhaps better approaches to the study of recidivism may stem from lack of understanding of the statistical theory underlying these approaches, the fact that many of these techniques have origins and documentation in other fields, and the belief that alternate methods are difficult to present to correctional administrators and policymakers in a readily understandable format. As a result of these and other factors, outcome research in penology remains steadfastly wedded to the binomial point estimate conceptualization of recidivism measurement.

Background

The Traditional Approach: The Binomial Model

In the binomial point estimate approach, the conventional protocol is to follow a cohort of releasees for a period of time and compare the proportion of offenders failing or succeeding under a specified criterion for the sub-groups of interest to the study. The sub-groups may be inmates released from halfway houses versus those released by other means, offenders who were subjected to an experimental treatment versus those who did not receive treatment, and so on. The adequacy of these studies is judged by factors such as the length of the follow-up period, the validity of the criterion, and the equivalency of the groups on variables other than treatment. It should be noted that no consensus has developed over the years on any of these elements of concern (Maltz, 1981; Waldo & Griswold, 1979).

Reliance on the binomial point estimate approach has resulted in at least three negative consequences for the advancement of our understanding of the recidivism problem. First, valuable data regarding the temporal nature of recidivism is discarded by this approach (Harris & Moitra, 1978). Second, substantive findings about the comparative efficacy of programs may be unduly affected by the length of the follow-up period used in the study. Third, misguided theoretical views about the post-release performance of offenders may have been perpetuated by this approach.

The first two consequences are interrelated. By neglecting to examine the timing of recidivism within the follow-up period, research using the binomial model fails to capitalize upon data on the length of time spent in the community prior to failure. Ironically, these data are customarily collected in outcome research since the exact date of failure is needed to place the subjects into success/fail categories as of the end of the follow-up period. For example, assume that two groups of offenders are followed in the community for 24 months, and the comparison of post-release performance yields a finding of no significant difference between the groups at that point. However, if Group A failures all occurred within the first 3 months of release, and Group B failures tended to occur in the second year of the follow-up period, information that could be useful to correctional officials in projecting inmate populations, estimating demand for institutional services, and for a variety of other decisions is ignored by the use of the 24 month point estimate. A further danger of this approach is also evident; if the study had employed a 12 month follow-up period, the substantive findings of the research would have

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been materially different (Maltz & McCleary, 1977).

In addition, the binomial model fails to adjust for the changing pool of offenders actually "at risk" of failure as subjects drop out of the study due to early revocation (Berecochea, Himelson, & Miller, 1972). If a constant proportion of the cases at risk fail each month, and the failures are distributed by month of failure, the immediate post-release period will yield a higher absolute number and proportion of failures than later periods for no reason other than the fact that the "at risk" pool is larger during the immediate post-release period. Failure to consider the conditional failure rate (incorporating the changing size of the "at risk" pool) has led to the development of theoretical perspectives such as the "post-release trauma thesis." This perspective contends that the first few months of supervision are marked by substantially higher risk of failure, and that after this critical period the probability of failure declines. Although this position has assumed the status of conventional wisdom among some penologists, researchers who have examined the perspective empirically report that it may be an artifact of the methods used to examine the data (Minor & Courlander, 1979).

Recent Advances: Failure Rate Analysis

Although only recently applied to problems of criminological research, the principles and procedures of "failure rate analysis" or "survival analysis" are well known to researchers in the biomedical and engineering sciences. In these contexts failure rate analysis is used to determine the survival curves for patients following different treatment regimens or for estimating the useful lives of manufactured products in field settings (Berkson & Gage, 1952; Gross & Clark, 1975; Hahn & Meeker, 1980).

A seminal paper by Stollmack and Harris (1974) illustrated the utility of applying these techniques to the study of recidivism and demonstrated that these techniques could provide powerful tools for program evaluation. In brief, Stollmack and Harris showed that correctional programs could be characterized not only by the overall proportion of participants who fail after release, but also by the differential "pace" of program failures.

The work of Stollmack and Harris spurred extensive work by researchers from several disciplines on the modeling of the timing of recidivism (see Barton & Turnbull, 1981; Bloom, 1979; Carr-Hill & Carr-Hill, 1972; Greenberg, 1978; Harris, Kaylan, & Maltz, 1981; Maltz, 1981; Maltz & McCleary, 1977; Schmidt & Witte, 1980). These diverse models have yielded several mathematical representations of both the process and the phenomenon of recidivism. For example, a model which assumes that all offenders fail at a constant rate is founded on a different theoretical premise than a model which assumes that subgroups of offenders have different overall probabilities of failure, and that within groups the conditional failure rate declines with time under supervision. By examining data bases to determine which model best represents the data, these researchers have posited several competing theoretical notions of the nature of recidivism. No single model has emerged as the preferred representation, but these studies have shown that recidivism is a far more complex phenomenon than the binomial model would suggest.

Attention has also focused on distinguishing the characteristics of successful and unsuccessful releasees conditioned on time. Several recent studies attempted to determine the correlates of early failures, mid-term failures, and late failures on community supervision. Kitchener, Schmidt, and Glaser (1977) reported that early parole failure was associated with auto theft offenders, age at first arrest, prior employment stability, anticipated home setting at release, and race. Schmidt and Witte (1980) found that the following types of individuals were likely to fail sooner on parole than others: the young, those who were single, the uneducated, those with many prior convictions and in-prison rule infractions, and those convicted of property offenses. Hoffman and Stone-Meierhoefer (1979) investigated the relationship between the offender's "salient factor score" (a measure of risk) and the timing of parole failure. They reported that, in addition to the association between risk and the overall probability of failure, risk was also associated with earlier returns. Type of release was not considered by Hoffman and Stone-Meierhoefer, but they recommended that this type of analysis be conducted for parole, conditional release, and expiration of sentence cohorts in order to examine the joint relationship of risk, release mode, and the timing of post-release failure. In summary, the work reviewed above indicates that consideration of the temporal distribution of recidivism enables researchers to address questions about survival in the community that take us beyond the parameters of investigation presented by the binomial model.

The Present Study

This research focused on two interrelated questions concerning the temporal distribution of recidivism among three groups of offenders released from a state correctional system. The groups were (a) inmates released to parole supervision, (b) inmates who were conditionally released,[1] and (c) inmates discharged without supervision after the expiration of the maximum sentence. The survival distributions of the three groups were compared overall and subsequent to the application of statistical controls for differential risk of failure. Second, an exploratory analysis of the characteristics of offenders associated with early versus late failure was conducted.

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[1] Conditional release (sometimes referred to as mandatory release) refers to release prior to the maximum expiration of the sentence in which the balance of the sentence (usually equal to the good time credits earned by the inmate) is served under supervision which, for the most part, is indistinguishable from parole supervision. Time under supervision is generally shorter for conditional release cases, but the reporting requirements, rules of conduct, and revocation procedures are similar to parole.

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Data Base

This analysis is based on data collected by the corrections department in a large Northeastern state. In 1979 the department conducted a five-year follow-up study of all inmates released from its facilities during 1972. The data set consisted of 5,593 inmates released to parole, conditional release, or by expiration of the maximum sentence for the first time on the current sentence ("originally released") during 1972. The five-year follow-up data base was merged with a comprehensive "exit record" developed on each prisoner at the time of release. When the criminal history and demographic data collected as part of the five-year follow-up study were combined with the detailed institutional history records, the data base represented a rich resource for the study of post-release outcome in relation to a wide variety of subject characteristics and institutional experience.

Inmates who were released from the state's mental hospitals for the criminally insane ($N = 111$) had to be excluded from the study because institutional records were not available for these subjects. Females were also excluded from this analysis ($N = 170$). Hence the final sample available for the study consisted of 5,312 male releasees.

The criterion of success in the corrections department study was any return to the state correctional system. In the present study, the criterion was readmission to the state correctional system that was the result of a new court commitment. This criterion excluded recommitments based on technical violations of parole regulations, and therefore represented the best approximation of a common criterion for the three release groups in the study.[2] Overall, of 3,438 offenders released to parole supervision, 16.7% were readmitted with a new court commitment during the five-year follow-up period; of 954 offenders conditionally released 23.3% were readmitted with a new court commitment; of 920 offenders released at the expiration of the sentence 25.9% were readmitted with a new commitment during the five-year period.

Research Procedure

The data were examined with the survival analysis procedure available in the SPSS package, Release 8 (Hull & Nie, 1979). In essence, survival analysis evaluates the "survival times" for the subgroups of interest to the study. The survival time is simply the interval between the starting event (in this case, release from prison) and a terminal event (readmission to the state correctional system with a new court commitment). Of course the cases that reached the 60 month follow-up point without a terminal event cannot be considered unconditional parole successes. For these cases, we know only that they survived to the end of the follow-up period. These cases are referred to as censored observations.[3] Censored observations are not excluded form the survival analysis; rather, the procedure makes full use of the available data on all individuals in the cohort.

The survival analysis procedure produces a life table for each cohort that provides information including the number of individuals in the "at risk" pool at each interval, the number and proportion of terminal events, and the cumulative proportion surviving. In addition, the probability density and the hazard rate are provided. (The probability density is commonly referred to as the standardized death rate, and is essentially the standarized deaths per month statistic; the hazard rate is the conditional failure rate discussed above, and is interpreted as the probability per unit time of dying in an interval, given survival to the beginning of the interval.) For a description of the methods used in comparisons of groups, see Hull and Nie, 1979.

In the second phase of the comparative analysis, the survival distributions of the three release groups were examined after controlling for a priori risk of recidivism. The risk groups were developed on the basis of a logit analysis of the probability of recidivism for the total cohort during the full 60 month follow-up period. (For a detailed discussion of the development of the risk classification, see Gottfredson, Mitchell-Herzfeld, and Flanagan, 1982).

Finally, the analysis suggested by Hoffman and Stone-Meierhoefer (1979)—an examination of the relationship between a priori risk of recidivism and the timing of recidivism within release groups—was conducted. Since the risk prediction scale developed in our previous research included many of the elements discussed in other studies as associated with the differential timing of parole failure, this analysis provided limited validation of these earlier efforts.

Findings

Overall Comparison of Survival Distributions

Survival times were calculated for all members of the sample.

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2. In an earlier study of these data, the authors demonstrated that the criterion of recidivism employed in a study can materially affect the findings. Specifically, the manner in which technical violations are treated for those offenders subject to post-release supervision essentially determines whether the supervised or unsupervised cases have more favorable outcomes. Moreover, there is no wholly satisfactory way of circumventing this problem when technical violations constitute a substantial proportion of the total failures in the supervised groups. (See Gottfredson, Mitchell-Herzfeld, & Flanagan, 1982.) The criterion used in this study is an often used compromise, and is supportable insofar as the three groups are equally at risk of a new court commitment. However, two problems remain. We do not know the proportion of technical violations incurred by the supervised groups that were actions in lieu of prosecution for a new crime. In addition, any time spent in confinement for the technical violation should be subtracted from the period of time at risk of a new court commitment for these groups. Also, it is arguable that time served for a technical violation that is in lieu of prosecution for a new offense would be longer than for a "true" technical violation. Since the data base examined here does not allow the estimation of the proportion of technical violations that were actions in lieu of prosecution for a new offense, these periods have not been subtracted. Therefore, the at risk period for supervised offenders who incurred technical violations may be inflated.

3. This form of censoring is referred to as Type I censoring. Other forms of censoring are widely used. For example, the end point for the follow-up could have been designated as a specific proportion of failures (e.g., terminate follow-up when the group has incurred a 20% failure proportion). This method is referred to as Type II censoring. For more information on censoring methods, see Kalbfleisch and Prentice, 1980.

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As noted above, about 17% of the offenders released on parole failed under the criterion of readmission as a result of a new court commitment. The mean time to failure for these failed parole cases was 29.8 months. For offenders released on conditional release, 23% failed; the mean time to failure for failed cases was 29.3 months. For offenders released by the expiration of the sentence, 26% were readmitted with a new court commitment during the follow-up period and the mean time to failure for failed cases was 29.1 months. Therefore, although there was a significant difference between the groups in the overall proportion that failed on community release ($X^2 = 49.3$, $df = 2$, $p < .01$), it appeared that the mean time to failure among those who ultimately failed was quite similar across the three groups.

Survival analysis improves upon the type of analysis presented above because it simultaneously considers both the overall proportion of offenders in each group who failed and the failure times for these cases in the comparison of the release performance of the groups. Appendices A through C present the basic life table data for the three release groups. As shown in these tables, when the successes were retained in the analysis, the median survival time for all groups was greater than 60 months. This is due to the fact that the proportion failing during the 60 month follow-up period did not exceed 50% in any of the groups. However, the comparison that incorporated censored observations indicated that there were significant differences between the groups in the survival distributions. As shown in Table 1, offenders released on parole failed at a significantly slower pace than offenders conditionally released or discharged at the expiration of the sentence. In addition, the pairwise comparison indicated that conditionally released offenders failed at a slower pace than expiration of sentence cases; however, the difference was not significant.

The hazard rates for the three release groups also revealed some interesting patterns in the temporal nature of recidivism among these offenders (see Figure 1). For all three groups, the hazard rate steadily increased during the first year after release and initially peaked in the 12-15 month interval. Among parolees, the hazard rate declined during the 12-21 month period and remained relatively stable thereafter. For the other groups, a similar decline was evident; but the hazard rate was less stable during the remainder of the period.

The hazard rates do not appear to support the thesis that the early release period was marked by a substantially greater probability of failure than later periods. However, the criterion employed in this study dated the terminal event as the date of readmission to prison, and the processes of prosecution, adjudication, and sentencing preceding the readmission would introduce a substantial lag between the "date of difficulty" and the actual readmission. Hence, time periods presented here may be shifted to the right of the time axis. If the time lag between parole failure and the readmission to institutional confinement was about 12 months, these data could be interpreted as providing limited support for the thesis that the early release period was characterized by somewhat higher risk of failure than later periods.

Returning to the differences observed between the groups in the overall survival distributions, the fact that the parole group

Table 1

Comparison of Survival Distributions of three Groups of Male Offenders Originally Released from Prison during 1972 and Followed for Five Years.

	Total *N*	Uncensored *N*	Censored *N*	Mean Score	Test Statistic
Overall Comparison:					
Parole	3,438	575	2,863	147.65	$D = 49.31$
Expiration of Sentence	920	238	682	—342.53	$df = 2$
Conditional Release	954	222	732	—201.76	$p = .0000$
Pairwise Comparisons:					
Parole	3,438	575	2,863	84.84	$D = 40.09$
Expiration of Sentence	920	238	682	—317.04	$df = 1$
					$p = .0000$
Parole	3,438	575	2,683	62.81	$D = 21.50$
Conditional Release	954	222	732	—226.35	$df = 1$
					$p = .0000$
Expiration of Sentence	920	238	682	— 25.49	$D = 1.76$
Conditional Release	954	222	732	24.59	$df = 1$
					$p = .185$

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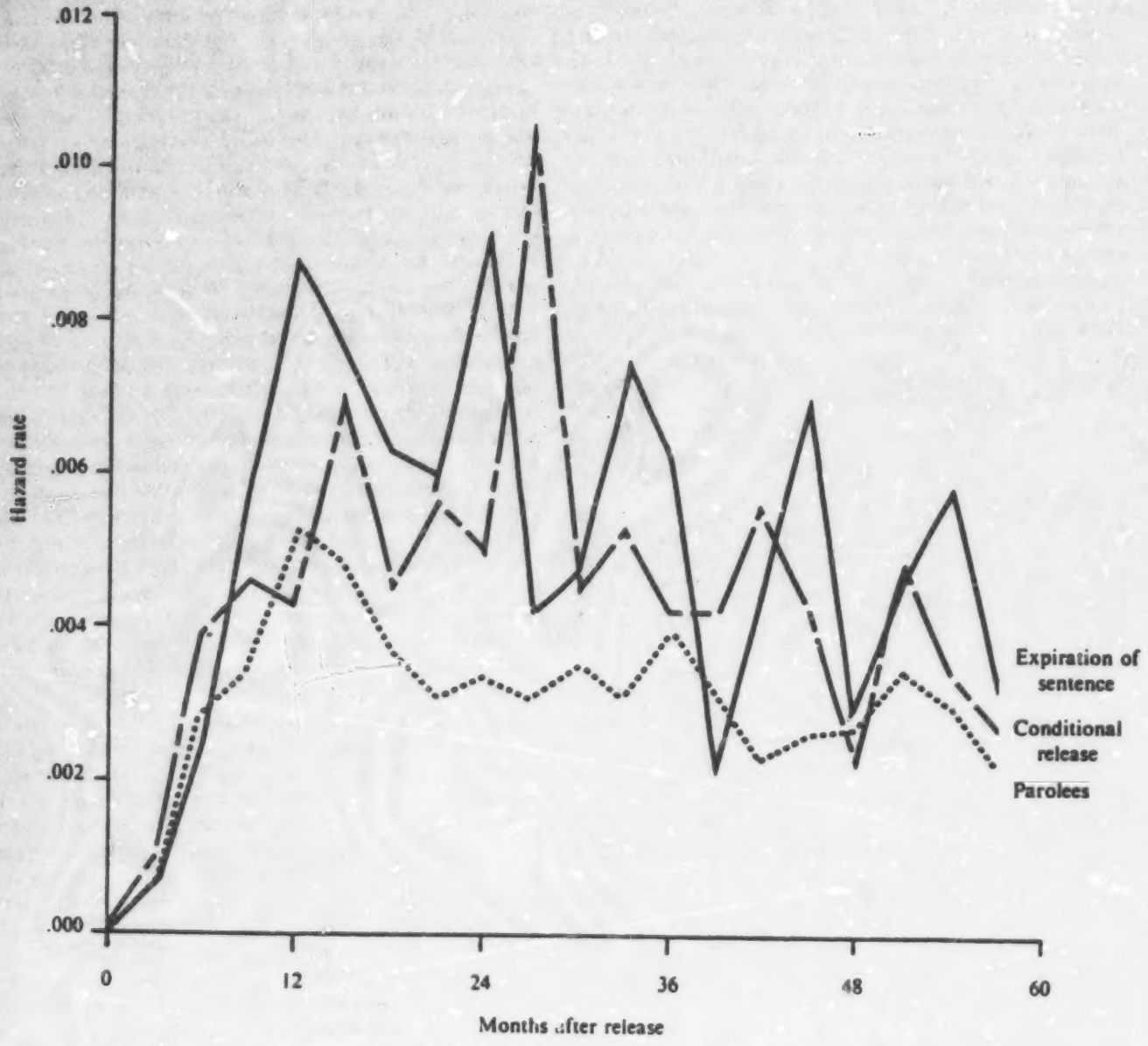
Figure 1

Hazard Rates for Male Offenders Originally Released during 1972 and Followed by 5 Years, by Release Type



Note: The hazard rate is the probability per month of dying in a given interval, given survival to the beginning of the interval.

failed at a significantly slower pace than the other release groups cannot be attributed to the fact that parole "works" in reducing or delaying recidivism. There are a number of reasons why this attribution cannot be made with certainty, but the foremost consideration to be weighed is that selection effects are biasing the results. If parolees were "better risks" at the time of release than offenders who left prison through conditional release or by expiration of the maximum sentence, the differences noted above may be attributable to the differential risk posed by the groups rather than to any factor related to

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supervision. Moreover, this is not an unwarranted consideration since "risk assessment" is one of the primary functions of the parole board (Dawson, 1969).

Of course the most adequate method of controlling selection bias is to conduct an experiment. However, legal and ethical constraints on the ability randomly to assign offenders to supervision/non-supervision status make such an experimental design nearly impossible to execute.[4] As an alternative, selection bias can be considered by the construction of comparable risk groups, i.e., by applying statistical controls for the a priori expected probability of recidivism. If the estimate of the expected risk of recidivism provides a less than perfect prediction, this procedure still leaves open the possibility that some selection bias remains, but the hypothesis is weakened. In the second segment of this study the survival distributions of the release cohorts were compared after the application of controls for the expected probability of recidivism.

Comparison of Survival Distributions within Risk Categories

Offender risk groups were created through a logit analysis of the dichotomous criterion variable during the entire five-year follow-up period. Logit models were fitted to the data that contained all significant effects except release type.[5] The coefficients were summed to obtain the expected log-odds of failure for each offender. After converting the log-odds to probabilities, the offenders were classified into three categories of risk. The cutting points for the risk groups were chosen on the basis of the distribution of the probabilities. Offenders in the "low" risk group (N = 1,971 or 37.5% of the sample) had an expected probability of recidivating of less than 15%. The "medium" risk group (N = 1,689 or 32.1% of the sample) had an expected probability of recidivism of greater than 15% but less than 25%. "High" risk offenders (N = 1,602 or 30.4% of the sample) had an expected probability of recidivism of 25% or higher.[6]

As expected, the distribution of risk categories across the three release groups was statistically significant and in the anticipated direction (χ^2 = 166.7, df = 4, $p < .01$). That is, inmates released to supervision were clearly better risks than those held to the expiration of the term. Over 44% of the expiration of sentence cases were classified in the "high risk" category, compared to 28% of the parolees and 27% of the conditional releasees. These results underscored the need to examine the survival distributions of the release groups subsequent to the applicaton of controls for the differential risk of recidivism.

The summary data[7] comparing the survival distributions between release groups within risk categories is presented in Appendix D. In all risk categories, the survival distributions of the three release groups were significantly different when subjected to overall comparison. Within each risk level, parolees failed at a slower pace than conditional releasees or expiration of sentence cases. The pairwise comparison between the conditional release and expiration of sentence cases showed that within each risk level the survival distributions of these groups were not significantly different. Unlike the overall comparison between these groups, however, the expiration of sentence cases failed at a slower pace in the medium- and high-risk groups, while conditional releasees failed at a slower pace in the low-risk group. In a further deviation from the overall findings, the comparison between parolees and expiration of sentence cases in the medium-risk group resulted in mean scores that were not statistically significant, although the direction of the difference was maintained.

Substantively, these data indicate that when the a priori risk of recidivism was controlled, parolees failed in the community at a slower pace than either conditional releasees or expiration of sentence cases. Moreover, the data suggest that the survival experience of conditional releasees -- who were subject to post-release supervision, but generally for a much shorter period of time than parolees—was much more like expiration of sentence cases than parolees. In short, if the differences between the groups' survival experiences can be attributed to the effect of post-release supervision, then the supervision period to which conditional releasees were subject may not have been long enough for any "supervision effect" to take effect.[8]

Another finding of interest was that the effect of type of release was moderated by the offender characteristics that were included in the risk prediction equation. While the direction of the pairwise comparisons between the parole cohort and the other cohorts did not change across risk levels, it should be noted that the significance levels of the mean score differences were reduced substantially in the controlled comparisons (due in part to reduced sample size) and in fact became insignificant for the parole-expiration of sentence comparison in the medium risk category.

Before accepting the interpretation that the supervision element of parole is responsible for the observed differences in the survival distributions, several caveats must be acknowledged. First, to the extent that other variables

4. All of the problems inherent in comparing parole with other forms of release would not be resolved by this experimental design, nowever. There remains the problem that offenders under supervision are subject to technical violations while unsupervised cases are not. In a pure test of the effectiveness of supervision in reducing recidivism, the "risks" that each group were exposed to would have to be comparable, necessitating the elimination of technical violations for supervised cases during the experimental period.
5. The risk score developed from the logit analysis was based on coefficients for the following variables: race, age at admission, military experience, drug use history, participation in educational programs in prison, four dichotomous offense variables (homicide, robbery, burglary, and drug offense), and the military experience drug offense interaction.
6. Risk scores could not be computed for 50 cases because of missing data on one or more of the component variables in the prediction equation.
7. The life tables for the nine subgroups (3 release groups × 3 risk levels) are available from the author upon request.
8. This interpretation is buttressed by examination of the distribution of the release groups across risk levels. As noted earlier, in terms of risk, the parole group and the conditional release group were quite similar. However, when survival distributions are examined, the conditional release group differs significantly from the parole group, and more closely resembles the mandatory expiration group.

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associated with post-release outcome were not measured and incorporated in the development of the risk categories, the possibility remains that these factors—and not parole supervision per se—accounted for the observed differences. Second, while the magnitude of the differences between groups is difficult to interpret with this type of analysis, other studies have concluded that the effect of parole supervision on the reduction of recidivism, although statistically significant, is not large (see Gottfredson, Mitchell-Herzfeld, & Flanagan, 1982; Sacks & Logan, 1979, 1980). Third, as mentioned above, the effect of parole supervision in this study may be overstated if time spent in confinement as a result of technical violations reduced the actual time at risk of new court commitments for members of the parole and conditional release group. In short, although the findings of research such as reported here may be encouraging to proponents of the parole system, it must be recognized that in the absence of the rigorous experimental data described above, definitive answers to the question of the effectiveness of post-release supervision remain unavailable.

Offender Characteristics and the Timing of Recidivism

In the final step of the analysis, the effect of offender attributes on the timing of recidivism was examined within release type categories. The following discussion is restricted to the parole cohort, although the analysis is applicable to each of the release types. The question posed is: Among offenders released on parole, do individual characteristics influence the differential timing of parole failure?

Since the risk scores that were developed to measure the expected probability of recidivism represented an index of the offender attributes most closely associated with overall post-release outcome, the risk categories were also used to address this question. The summary data from this analysis are presented in Table 2.

Table 2 shows that the parole cohort had significantly different survival distributions when compared across risk levels. The differences were significant overall and in all pairwise comparisons. Moreover, the differences were all in the expected direction. Low-risk parolees failed in the community at the slowest pace, followed by medium-risk and high-risk offenders. The validity of the risk classification was supported insofar as the results presented for parolees in Table 2 were replicated in both the conditional release group and the expiration of sentence group as well (data not presented in tabular form).

The implications of these findings go beyond the validation of the risk prediction or in determining "who fails soonest on parole." Examination of the hazard rate data for the parole group, presented in Figure 2, yields a number of policy relevant implications for the organization of parole services.

The patterns in the hazard rate data suggest that for low-risk parolees, the conditional probability of failing in a given interval increased steadily through the first 15 months of supervision and reached a peak in the 24th month. In the interval 24-26 months, approximately .30% of the population at risk failed in each month. After this point, the conditional probability of failure declined and remained below .20% for the remainder of the observation period. Among medium-risk parolees, the hazard rate rose through the 21 months interval (reaching a peak probability of over .50% per month in 21-23 months) and exhibited a similar decline thereafter, although in most intervals through the balance of the observation period the hazard rate for the medium-risk group was about double that of the low-risk group. The hazard rate for the high-risk parolees rose much more sharply during the initial parole period, reaching a peak in the 12 month interval (at a conditional failure rate of 1.1% of the at risk pool per month) and then declined sharply. It can also be noted that the hazard rate for the high-risk parolee group was marked by greater variation in the later intervals (24-60 months) than the other risk groups, but the level of the hazard rate for the high-risk group was generally 1.75 times higher than the medium-risk group and 3.5 times higher than the low-risk group in most of the intervals.

Policy Implications

These data have a number of implications for parole policy and correctional program planning. First, the data suggest that the "critical period" of increasing risk of failure differs in relation to the characteristics of the offender. High-risk offenders appeared to be particularly vulnerable during the first year after release, while low-risk and medium-risk parolees presented an increased probability of difficulty during the initial two-year period. Interventions designed to enhance the offender's prospects for successful transition to the community should be grounded in the knowledge that the timing and duration of these intervention strategies must be geared to the risk periods when they are most needed.

Second, these data have implications for the allocation of scarce resources to offenders. Hoffman and Stone-Meierhoefer (1979) suggested that this type of information can be used as the basis for parole policy decisions on the optimum time to terminate parole supervision. The budgetary savings incurred by early termination of supervision (at the point where the expected probability of recidivism thereafter reduces to a specified "acceptable" level) can be redistributed to increase services to offenders in the higher-risk time periods.

Third, correctional population planners can make use of these data in projecting the need for prison beds, staff, and programs. By monitoring the mix of risk levels in cohorts released from custody during a specific time period, more accurate projections of the proportion of offenders who will return and of the pace at which these cases will return to the prison system might be accomplished (Schmidt & Witte, 1980).

Finally, data on the pace of failure in the community can be an important part of program evaluation efforts. Schmidt and Witte (1980) suggest that models based on survival analysis data can be used to predict the expected recidivism rate for program participants at various points in the future. Program evaluations can then focus on whether the program succeeded

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Table 2

Comparison of Survival Distributions for 3,407 Male Parolees Originally Released from Prison During 1972 and Followed for Five Years, by Risk Category

	Total *N*	Uncensored *N*	Censored *N*	Mean Score	Test Statistic
Overall Comparison:					
Low Risk	1,351	103	1,248	309.54	$D = 170.280$
Medium risk	1,108	199	909	— 39.69	$df = 2$
High risk	948	269	679	—394.75	$p = .0000$
Pairwise Comparisons:					
Low risk	1,351	103	1,248	113.78	$D = 59.226$
Medium risk	1,108	199	909	—138.74	$df = 1$
					$p = .0000$
Low risk	1,351	103	1,248	195.76	$D = 173.280$
High risk	948	269	679	—278.98	$df = 1$
					$p = .0000$
Medium risk	1,108	199	909	99.05	$D = 31.016$
High risk	948	269	679	—115.77	$df = 1$
					$p = .0000$

in reducing the expected probability of recidivism. These quasi-experimental designs, although heavily dependent upon the accuracy of the model used to predict the expected probability of recidivism, would enable evaluators to avoid the numerous administrative and methodological obstacles to true experimental designs in program evaluation.

Conclusion

In this study several methods that incorporate the timing of post-release failure into analyses of recidivism have been illustrated. The concept of recidivism includes at least two components: the overall proportion of cases that ultimately fail and the pace at which cases fail. Reliance on examination of the former component to the exclusion of the latter can no longer be supported since a variety of statistical techniques that incorporate the components jointly are becoming available to researchers. However, in order to complete the picture of the "true" nature of recidivism for purposes of program evaluation, at least one additional component must be included in our conceptualization. This relates to measures of the seriousness of the subsequent criminal act. Although studies of crime switching and criminal career patterning are currently being undertaken, it is clear this kind of information must be routinely collected in outcome research. Moreover, methods must be developed to systematically incorporate changes in the seriousness level of crimes at pre- and post-intervention periods. No one would seriously argue that an offender on parole for aggravated assault who commits a petty larceny should be counted as a failure in the same terms as an offender on parole for murder who commits a second murder. (Similar criticisms have been directed at the simple summing methods used to develop the "Index Crimes" figures reported by the Uniform Crime Reports program.)

In short, future research in the area of criminal recidivism must recognize the subject as the complex phenomenon that it is. Until our research methods recognize this complexity our theories will be inadequate and our understanding of this process will not increase.

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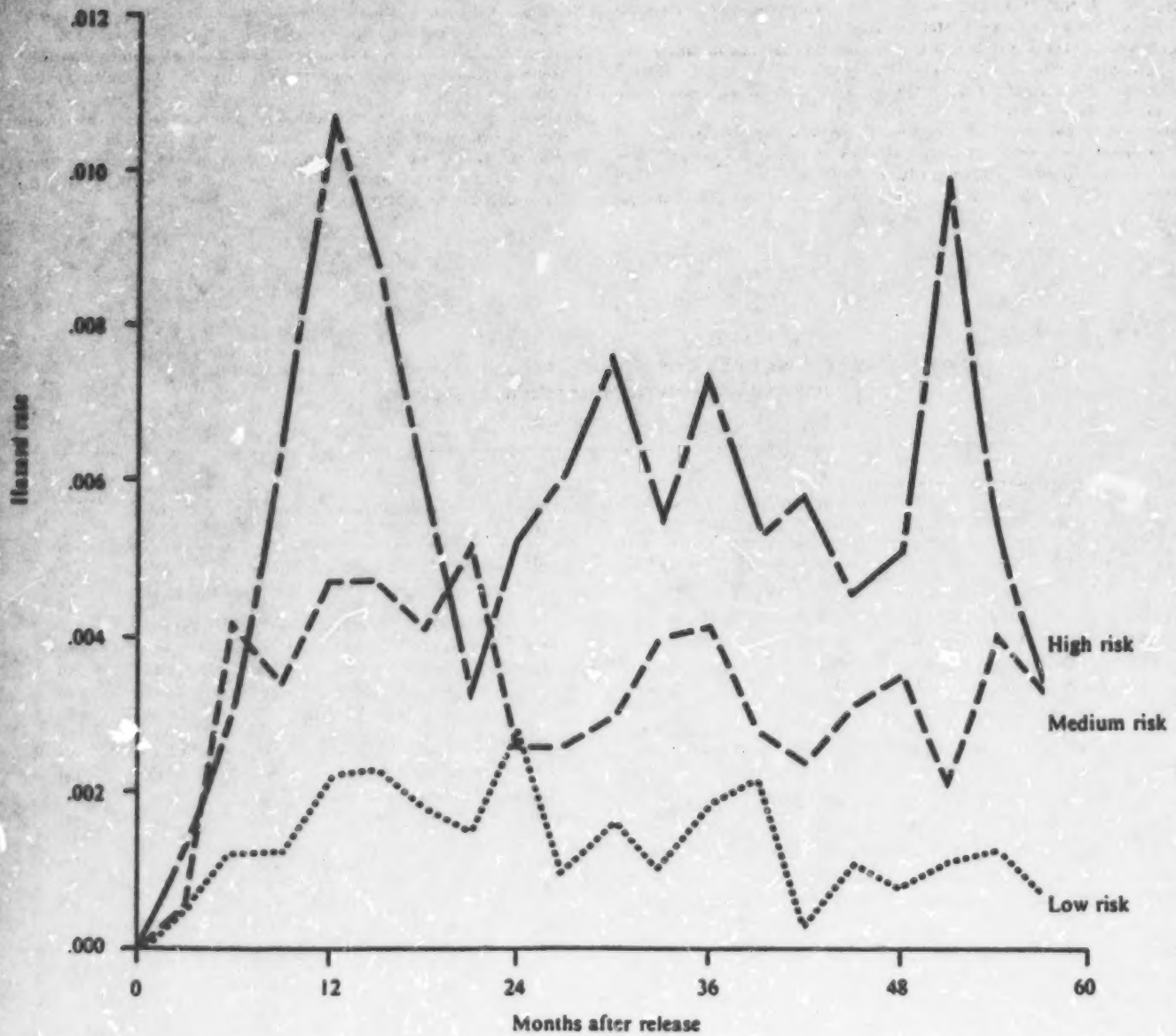
Figure 2

Hazard Rates for Male Offenders Originally Released during 1972 and Followed by 5 Years, by Risk Group



Note: The hazard rate is the probability per month of dying in a given interval, given survival to the beginning of the interval.

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Appendix A

Life table for 3,438 male offenders originally released to parole during 1972 and followed for five years after release, by quarter.

Interval start time	Number entering this interval	Number withdrawn during interval	Number exposed to risk	Number of terminal events	Proportion terminating	Proportion surviving	Cumulative proportion surviving at end	Probability density	Hazard rate	Standard errors of: Cumulative surviving	Probability density	Hazard rate
0	3,438	0	3,438	0	.0000	1.0000	1.0000	.0000	.0000	.000	.000	.000
3	3,438	0	3,438	7	.0020	.9980	.9980	.0007	.0007	.001	.000	.000
6	3,431	0	3,431	29	.0085	.9915	.9895	.0028	.0028	.002	.001	.001
9	3,402	0	3,402	35	.0103	.9897	.9793	.0034	.0034	.002	.001	.001
12	3,367	0	3,367	53	.0157	.9843	.9639	.0051	.0053	.003	.001	.001
15	3,314	0	3,314	47	.0142	.9858	.9503	.0046	.0048	.004	.001	.001
18	3,267	0	3,267	36	.0110	.9890	.9398	.0035	.0037	.004	.001	.001
21	3,231	0	3,231	30	.0093	.9907	.9311	.0029	.0031	.004	.001	.001
24	3,201	0	3,201	32	.0100	.9900	.9218	.0031	.0033	.005	.001	.001
27	3,169	0	3,169	29	.0092	.9908	.9133	.0028	.0031	.005	.001	.001
30	3,140	0	3,140	33	.0105	.9895	.9037	.0032	.0035	.005	.001	.001
33	3,107	0	3,107	29	.0093	.9907	.8953	.0028	.0031	.005	.001	.001
36	3,078	0	3,078	37	.0120	.9880	.8845	.0036	.0040	.005	.001	.001
39	3,041	0	3,041	28	.0092	.9908	.8764	.0027	.0031	.006	.001	.001
42	3,013	0	3,013	21	.0070	.9930	.8703	.0020	.0023	.006	.000	.001
45	2,992	0	2,992	23	.0077	.9923	.8636	.0022	.0026	.006	.000	.001
48	2,969	0	2,969	24	.0081	.9919	.8566	.0023	.0027	.006	.000	.001
51	2,945	0	2,945	31	.0105	.9895	.8476	.0030	.0035	.006	.001	.001
54	2,914	0	2,914	27	.0093	.9907	.8397	.0026	.0031	.006	.001	.001
57	2,887	0	2,887	19	.0066	.9934	.8342	.0018	.0022	.006	.000	.001
60	+2,868	2,863	1,436	5	.0035	.9965	.8313	••[a]	••	.006	••	••

[a] The criterion of failure was any readmission to the state correctional system as a result of a new court commitment. The calculations of the probability density and the hazard rate for the final interval are meaningless. The median survival time for these data is 60 months.

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Appendix B

Life table for 920 male offenders originally released by expiration of the sentence during 1972 and followed for five years after release, by quarter.

Interval (from time)	Number entering this interval	Number withdrawn during interval	Number exposed to risk	Number of terminal events	Proportion terminating	Proportion surviving	Cumulative proportion surviving at end	Probability density	Hazard rate	Standard errors of: Cumulative surviving	Probability density	Hazard rate
0	920	0	920	0	.0000	1.0000	1.0000	.0000	.0000	.000	.000	.000
3	920	0	920	2	.0022	.9978	.9978	.0007	.0007	.002	.001	.001
6	918	0	918	7	.0076	.9924	.9902	.0025	.0026	.003	.001	.001
9	911	0	911	16	.0176	.9824	.9728	.0031	.0032	.005	.001	.001
12	895	0	895	25	.0257	.9743	.9478	.0083	.0087	.007	.002	.002
15	870	0	870	20	.0229	.9771	.9261	.0072	.0077	.009	.002	.002
18	850	0	850	16	.0188	.9812	.9087	.0058	.0063	.009	.001	.002
21	834	0	834	15	.0179	.9821	.8924	.0054	.0060	.010	.001	.002
24	819	0	819	22	.0268	.9732	.8685	.0080	.0091	.011	.002	.002
27	797	0	797	10	.0125	.9875	.8576	.0034	.0042	.012	.001	.001
30	787	0	787	11	.0139	.9261	.8457	.0040	.0047	.012	.001	.001
33	776	0	776	17	.0219	.9781	.8272	.0062	.0074	.012	.001	.002
36	761	0	761	14	.0184	.9816	.8120	.0051	.0062	.013	.001	.002
39	747	0	747	5	.0067	.9933	.8065	.0018	.0022	.013	.001	.001
42	742	0	742	10	.0135	.9865	.7957	.0036	.0045	.013	.001	.001
45	732	0	732	15	.0205	.9795	.7793	.0054	.0069	.014	.001	.002
48	717	0	717	6	.0084	.9916	.7728	.0022	.0028	.014	.001	.001
51	711	0	711	10	.0141	.9859	.7620	.0036	.0047	.014	.001	.001
54	701	0	701	12	.0171	.9829	.7489	.0043	.0058	.014	.001	.002
57	689	0	689	7	.0102	.9898	.7413	.0025	.0034	.014	.001	.001
60	+682	682	341	0	.0000	1.0000	.7413	**	**	.014	**	**

*See Appendix A, note a.

Appendix C

Life table for 954 male offenders originally released on conditional release during 1972 and followed for five years after release, by quarter.

Interval (from time)	Number entering this interval	Number withdrawn during interval	Number exposed to risk	Number of terminal events	Proportion terminating	Proportion surviving	Cumulative proportion surviving at end	Probability density	Hazard rate	Standard errors of: Cumulative surviving	Probability density	Hazard rate
0	954	0	954	0	.0000	1.0000	1.0000	.0000	.0000	.000	.000	.000
3	954	0	954	3	.0031	.9969	.9969	.0010	.0010	.002	.001	.001
6	951	0	951	11	.0116	.9884	.9853	.0038	.0039	.004	.001	.001
9	940	0	940	13	.0138	.9862	.9717	.0045	.0046	.005	.001	.001
12	927	0	927	12	.0129	.9871	.9591	.0042	.0043	.006	.001	.001
15	915	0	915	19	.0208	.9792	.9392	.0066	.0070	.008	.002	.002
18	896	0	896	12	.0134	.9866	.9266	.0042	.0045	.008	.001	.001
21	884	0	884	15	.0170	.9830	.9109	.0052	.0057	.009	.001	.001
24	869	0	869	13	.0150	.9850	.8973	.0045	.0050	.010	.001	.001
27	856	0	856	27	.0315	.9685	.8690	.0094	.0107	.011	.002	.002
30	829	0	829	11	.0133	.9867	.8574	.0038	.0045	.011	.001	.001
33	818	0	818	13	.0159	.9841	.8438	.0045	.0053	.012	.001	.001
36	805	0	805	10	.0124	.9876	.8333	.0035	.0042	.012	.001	.001
39	795	0	795	10	.0126	.9874	.8229	.0035	.0042	.012	.001	.001
42	785	0	785	13	.0166	.9834	.8093	.0045	.0056	.013	.001	.002
45	772	0	772	10	.0130	.9870	.7987	.0035	.0043	.013	.001	.001
48	762	0	762	5	.0066	.9934	.7935	.0017	.0022	.013	.001	.001
51	757	0	757	11	.0145	.9855	.7820	.0038	.0049	.013	.001	.001
54	746	0	746	8	.0107	.9893	.7736	.0028	.0036	.014	.001	.001
57	738	0	738	6	.0081	.9919	.7673	.0021	.0027	.014	.001	.001
60	+732	732	366	0	.0000	1.0000	.7673	**	**	.014	**	**

*See Appendix A, note a.

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Appendix D

Comparison of survival distributions of three groups of male offenders originally released from prison during 1972 and followed for five years, by risk category

	Total N	Unsuccessful N	Censored N	Mean Score	Test Statistic
Low Risk Level:					
Overall Comparison:					
Parole	1,351	103	1,248	43.86	$D = 23.78$
Expiration of Sentence	193	29	159	-99.99	$df = 2$
Conditional Release	432	63	369	-93.64	$p = .0000$
Pairwise Comparisons:					
Parole	1,351	103	1,248	13.89	$D = 11.46$
Expiration of Sentence	188	29	159	-99.86	$df = 1$
					$p = .0007$
Parole	1,351	103	1,248	29.97	$D = 18.58$
Conditional Release	432	63	369	-93.70	$df = 1$
					$p = .0000$
Expiration of Sentence	188	29	159	-.13	$D = .00$
Conditional Release	432	63	369	.00	$df = 1$
					$p = .9921$
Medium Risk Level:					
Overall Comparison:					
Parole	1,108	199	909	37.11	$D = 10.74$
Expiration of Sentence	321	72	249	-42.41	$df = 2$
Conditional Release	260	69	191	-105.00	$p = .0046$
Pairwise Comparisons:					
Parole	1,108	199	909	15.02	$D = 3.50$
Expiration of Sentence	321	72	249	-51.85	$df = 1$
					$p = .0616$
Parole	1,108	199	909	22.09	$D = 9.50$
Conditional Release	260	69	191	-94.15	$df = 1$
					$p = .0021$
Expiration of Sentence	321	72	249	9.44	$D = 1.003$
Conditional Release	260	69	191	-11.65	$df = 1$
					$p = .3167$
High Risk Level:					
Overall Comparison:					
Parole	948	269	679	41.60	$D = 7.086$
Expiration of Sentence	401	135	266	-54.94	$df = 2$
Conditional Release	253	88	165	-68.78	$p = .0289$
Pairwise Comparisons:					
Parole	948	269	679	24.07	$D = 4.638$
Expiration of Sentence	401	135	266	-56.90	$df = 1$
					$p = .0313$
Parole	948	269	679	17.52	$D = 4.399$
Conditional Release	253	88	165	-65.66	$df = 1$
					$p = .0360$
Expiration of Sentence	401	135	266	1.96	$D = .039$
Conditional Release	253	88	165	- 3.11	$df = 1$
					$p = .8431$

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U.S. PAROLE COMMISSION PAROLING POLICY GUIDELINES:

28 C.F.R. 2.20 and accompanying Notes and Procedures

reprinted from:
United States Parole Commission Rules
and Procedures Manual
pp. 25-72 (October 1984)

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§2.20 PAROLING POLICY GUIDELINES; STATEMENT OF GENERAL POLICY.

(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the United States Parole Commission has adopted guidelines for parole release consideration.

(b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics. The time ranges specified by the guidelines are established specifically for cases with good institutional adjustment and program progress.

(c) These time ranges are merely guidelines. Where the circumstances warrant, decisions outside of the guidelines (either above or below) may be rendered.

(d) The guidelines contain instructions for the rating of certain offense behaviors. However, especially mitigating or aggravating circumstances in a particular case may justify a decision or a severity rating different from that listed.

(e) An evaluation sheet containing a "salient factor score" serves as an aid in determining the parole prognosis (potential risk of parole violation). However, where circumstances warrant, clinical evaluation of risk may override this predictive aid.

(f) Guidelines for reparole consideration are set forth at Sec. 2.21.

(g) The Commission shall review the guidelines, including the salient factor score, periodically and may revise or modify them at any time as deemed appropriate.

(h)(1) The Adult Guidelines shall apply to all offenders except as specified in paragraph (2).

(2) The Youth/NARA Guidelines will apply to any offender sentenced under the Youth Corrections Act, the Narcotic Rehabilitation Act, or the Juvenile Justice Act, and to any other offender who was less than 22 years of age at the time the current offense was committed, regardless of sentence type. If an offender was less than 18 years of age at the time of the current offense, such youthfulness shall, in itself, be considered as a mitigating factor.

(i) For criminal behavior committed while in confinement see §2.36 (Rescission Guidelines).

(j)(1) In probation revocation cases, the original federal offense behavior and any new criminal conduct on probation (federal or otherwise) is considered in assessing offense severity. Where there is new criminal conduct on probation, the original federal conviction is also counted in the salient factor score. Credit is given towards the guidelines for any time spent in confinement on any offense considered in assessing offense severity.

(2) Exception: Where probation has been revoked on a complex sentence [i.e., a committed sentence of more than six months followed by a probation term], the case shall be considered for guideline purposes under Sec. 2.21 as if parole rather than probation had been revoked.

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GUIDELINES FOR DECISION-MAKING

[Guidelines for Decision-Making, Customary Total Time to be Served before Release (including jail time)]

OFFENSE CHARACTERISTICS: Severity of Offense Behavior	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score 1981)			
	Very Good (10-8)	Good (7-6)	Fair (5-4)	Poor (3-0)
Category One *[formerly 'low severity']*	<=6 months	Adult Range 6-9 months	9-12 months	12-16 months
	(<=6) months	(Youth Range) (6-9) months	(9-12) months	(12-16) months
Category Two *[formerly 'low moderate severity']*	<=8 months	Adult Range 8-12 months	12-16 months	16-22 months
	(<=8) months	(Youth Range) (8-12) months	(12-16) months	(16-20) months
Category Three *[formerly 'moderate severity']*	10-14 months	Adult Range 14-18 months	18-24 months	24-32 months
	(8-12) months	(Youth Range) (12-16) months	(16-20) months	(20-26) months
Category Four *[formerly 'high severity']*	14-20 months	Adult Range 20-26 months	26-34 months	34-44 months
	(12-16) months	(Youth Range) (16-20) months	(20-26) months	(26-32) months
Category Five *[formerly 'very high severity']*	24-36 months	Adult Range 36-48 months	48-60 months	60-72 months
	(20-26) months	(Youth Range) (26-32) months	(32-40) months	(40-48) months

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OFFENSE CHARACTERISTICS:	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score 1981)			
Severity of Offense Behavior	Very Good (10-8)	Good (7-6)	Fair (5-4)	Poor (3-0)
		Adult Range		
	40-52 months	52-64 months	64-78 months	78-100 months
Category Six *[formerly 'Greatest I severity']*		(Youth Range)		
	(30-40) months	(40-50) months	(50-60) months	(60-76) months
		Adult Range		
	52-80 months	64-92 months	78-110 months	100-148 months
Category Seven *[formerly included in 'Greatest II severity']*		(Youth Range)		
	(40-64) months	(50-74) months	(60-86) months	(76-110) months
		Adult Range		
	100+ months	120+ months	150+ months	180+ months
Category Eight* *[formerly included in 'Greatest II severity']*		(Youth Range)		
	(80+) months	(100+) months	(120+) months	(150+) months

*Note: For Category Eight, no upper limits are specified due to the extreme variability of the cases within this category. For decisions exceeding the lower limit of the applicable guideline category BY MORE THAN 48 MONTHS, the pertinent aggravating case factors considered are to be specified in the reasons given (e.g., that a homicide was premeditated or committed during the course of another felony; or that extreme cruelty or brutality was demonstrated).

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U.S. PAROLE COMMISSION OFFENSE BEHAVIOR SEVERITY INDEX

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CHAPTER ELEVEN. OFFENSES INVOLVING ORGANIZED CRIMINAL ACTIVITY, GAMBLING, OBSCENITY, SEXUAL EXPLOITATION OF CHILDREN, PROSTITUTION, AND NON-GOVERNMENTAL BRIBERY
Subchapter A - Organized Crime Offenses
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CHAPTER TWELVE. MISCELLANEOUS OFFENSES

CHAPTER THIRTEEN. GENERAL NOTES AND DEFINITIONS
Subchapter A - General Notes
Subchapter B - Definitions

CHAPTER ONE - OFFENSES OF GENERAL APPLICABILITY

101 Conspiracy
Grade conspiracy in the same category as the underlying offense.

102 Attempt
Grade attempt in the same category as the offense attempted.

103 Aiding and Abetting
Grade aiding and abetting in the same category as the underlying offense.

104 Accessory After the Fact*
Grade accessory after the fact as two categories below the underlying offense, but not less than Category One.

--- NOTE TO CHAPTER ONE
The reasons for a conspiracy or attempt not being completed may, where the circumstances warrant, be considered as a mitigating factor (e.g., where there is voluntary withdrawal by the offender prior to completion of the offense). *[[Notes and Procedures.* In grading unconsummated conspiracy offenses, care must be taken to distinguish the specific and imminent elements of the offense (which are to be considered) from those which are speculative and remote.]]

CHAPTER TWO - OFFENSES INVOLVING THE PERSON

SUBCHAPTER A - HOMICIDE OFFENSES

201 Murder
Murder*, or a forcible felony* resulting in the death of a person other than a participating offender, shall be graded as Category Eight.
[[Notes and Procedures. (1) Grade a forcible felony resulting in the death of a person other than a participating offender as Category Eight even if the death was not intentional. Example 201-1: During a robbery, an offender's weapon discharges accidentally, resulting in the death of

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a bank teller. (2) Grade conduct as 'attempted murder' only where it is established from the circumstances that both (a) death was clearly the intended object; and (b) had death resulted, the offense would have been graded as Category Eight. Example 201-2: An offender places a bomb aboard an aircraft, but the bomb fails to explode. Example 201-3: During a robbery, an offender places a loaded revolver to the head of a victim and pulls the trigger, but the weapon misfires. Grade each of the above examples as 'attempted murder'. (3) An attempt to kill which, if successful, would have been classified as 'voluntary manslaughter' (Category Seven), is to be graded as 'assault with serious bodily injury clearly intended'.]]

202 Voluntary Manslaughter*
Category Seven.
[[Notes and Procedures. Example 202-1: An offender stabs and kills a person during a drunken quarrel in a tavern.]]

203 Involuntary Manslaughter*
Category Four.
[[Notes and Procedures. This offense is frequently referred to as 'negligent homicide'. Example 203-1: While driving under the influence of alcohol, an offender loses control of a vehicle and kills a pedestrian.]]

SUBCHAPTER B - ASSAULT OFFENSES

211 Assault During Commission of Another Offense
(a) If serious bodily injury* results or if 'serious bodily injury is clearly intended'*, grade as Category Seven; *[[Notes and Procedures.* Example 211(a)-1: An offender, while fleeing from a robbery, fires a weapon from a distance at a pursuing police officer. The firing of the weapon at the officer in this circumstance is sufficient to find that 'serious bodily injury' was clearly intended.]]

(b) If bodily injury* results, or a weapon is fired by any offender, grade as Category Six; *[[Notes and Procedures.* Example 211(b)-1: During a residential burglary, an offender is confronted by the victim; the offender strikes the victim with his fist and breaks the victim's jaw. Example 211(b)-2: During a bank robbery, an offender fires a weapon at the ceiling to intimidate the victims. No one is injured]].
(c) Otherwise, grade as Category Five.

212 Assault
(a) If serious bodily injury* results or if 'serious bodily injury is clearly intended'*, grade as Category Seven; *[[Notes and Procedures.* Example 212(a)-1: During an argument, an offender strikes the victim over the head with a bottle causing injuries sufficient to place the victim on the 'critical' list. Example 212(a)-2: An offender throws a vial of acid at the face of a victim.]]
(b) If bodily injury* results or a dangerous weapon is used by any offender, grade as Category Five;
(c) Otherwise, grade as Category Two.
(d) Exception: If the victim was known to be a 'protected person'* or law enforcement, judicial, or correctional official, grade conduct

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under (a) as Category Seven, (b) as Category Six, and (c) as Category Three. *[[Notes and Procedures.* Grade an assault on a criminal justice official during an arrest under this section only if it involves force sufficient to create a likelihood of bodily injury (e.g., striking or kicking the officer).]]

SUBCHAPTER C - KIDNAPING AND RELATED OFFENSES

221 Kidnaping
(a) If the purpose of the kidnaping is for ransom or 'political' terrorism, grade as Category Eight.
(b) If a person is held hostage in a known place for purposes of extortion (e.g., forcing a bank manager to drive to a bank to retrieve money by holding a family member hostage at home), grade as Category Seven;
(c) If a victim is used as a shield or hostage in a confrontation with law enforcement authorities, grade as Category Seven;
(d) Otherwise, grade as Category Seven.
(e) Exception: If not for ransom or terrorism, and no bodily injury to victim, and limited duration (e.g., abducting the driver of a truck during a hijacking and releasing him unharmed an hour later), grade as Category Six.

222 Demand for Ransom
(a) If a kidnaping has, in fact, occurred, but it is established that the offender was not acting in concert with the kidnapper(s), grade as Category Seven;
(b) If no kidnapping has occurred, grade as 'extortion'.

SUBCHAPTER D - SEXUAL OFFENSES

231 Forcible Rape or Forcible Sodomy
(a) Category Seven.
(b) Exception: If a prior consensual sexual relationship is present between victim and offender, grade as Category Six.

232 Carnal Knowledge*
(a) Category Four.
(b) Exception: If the relationship is clearly consensual, and the victim is at least 14 years old, and the age difference between victim and offender is less than four years, grade as Category One.
[[Notes and Procedures. Where the victim is less than 12 years of age at the time of the offense, the aggravating factor of an extremely vulnerable victim is presumed to exist.]]

SUBCHAPTER E - OFFENSES INVOLVING AIRCRAFT

241 Aircraft Piracy
Category Eight.

242 Interference with a Flight Crew
(a) If the conduct or attempted conduct has potential for creating a significant safety risk to an aircraft or passengers, grade as Category Seven;
(b) Otherwise, grade as Category Two.

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SUBCHAPTER F - COMMUNICATION OF THREATS

251 Communicating a Threat [to kill, assault, or kidnap]
(a) Category Four;
(b) Notes:
(1) Any overt act committed for the purposes of carrying out a threat in this subchapter may be considered as an aggravating factor.
(2) If for purposes of extortion or obstruction of justice, grade according to Chapter Three, Subchapter C, or Chapter Six, Subchapter B, as applicable.

CHAPTER THREE - OFFENSES INVOLVING PROPERTY

SUBCHAPTER A - ARSON AND OTHER PROPERTY DESTRUCTION OFFENSES

301 Property Destruction by Arson or Explosives
(a) If the conduct results in serious bodily injury* or if 'serious bodily injury is clearly intended'*, grade as Category Seven;
(b) If the conduct (i) involves any place where persons are present or likely to be present; or (ii) involves a residence, building, or other structure; or (iii) results in bodily injury*, grade as Category Six;
(c) Otherwise, grade as 'property destruction other than listed above' but not less than Category Five.
[[Notes and Procedures. (1) The term 'structure' is not subject to precise definition, but comparability in size to a building may be used for guidance. Thus, an automobile, a small boat, or a small detached shed would not be considered a structure. On the other hand, a ship or an oil storage complex would be considered a structure under this provision. (2) Reminder: Grade multiple separate arsons under the multiple separate offense procedure.]]

302 Wrecking a Train
Category Seven.

303 Property Destruction Other Than Listed Above
(a) If the conduct results in bodily injury* or serious bodily injury*, or if 'serious bodily injury is clearly intended'*, grade as if 'assault during commission of another offense';
(b) If damage of more than $500,000 is caused, grade as Category Six;
(c) If damage of more than $100,000 but not more than $500,000 is caused, grade as Category Five;
(d) If damage of at least $20,000 but not more than $100,000 is caused, grade as Category Four;
(e) If damage of at least $2000 but less than $20,000 is caused, grade as Category Three;
(f) If damage of less than $2000 is caused, grade as Category One.
(g) Exception: If a significant interruption of a government or public utility function is caused, grade as not less than Category Three.

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SUBCHAPTER B - CRIMINAL ENTRY OFFENSES

311 Burglary or Unlawful Entry
(a) If the conduct involves an armory or similar facility (e.g., a facility where automatic weapons or war materials are stored) for the purpose of theft or destruction of weapons or war materials, grade as Category Six;
(b) If the conduct involves an inhabited dwelling (whether or not a victim is present), or any premises with a hostile confrontation with a victim, grade as Category Five;
(c) If the conduct involves use of explosives or safecracking, grade as Category Five;
(d) Otherwise, grade as 'theft' offense, but not less than Category Two.
(e) Exception: If the grade of the applicable 'theft' offense exceeds the grade under this subchapter, grade as a 'theft' offense.
[[Notes and Procedures. The term 'burglary/unlawful entry' refers to conduct involving a structure or other enclosed premises. Breaking and entering/unlawful entry of an automobile is graded as a theft offense (Offense 331).]]

SUBCHAPTER C - ROBBERY, EXTORTION, AND BLACKMAIL

321 Robbery
(a) Category Five.
(b) Exceptions:
(1) If the grade of the applicable 'theft' offense exceeds the grade for robbery, grade as a 'theft' offense.
(2) If any offender forces a victim to accompany any offender to a different location, or if a victim is forcibly detained for a significant period, grade as Category Six.
(3) Pickpocketing (stealth-no force or fear), see Subchapter D.
(c) Note: Grade purse snatching (fear or force) as robbery.

322 Extortion
(a) If by threat of physical injury to person or property, or extortionate extension of credit (loansharking)*, grade as Category Five;
(b) If by use of official governmental position, grade according to Chapter Six, Subchapter C.
(c) Exceptions:
(1) If the grade of the applicable 'theft' offense exceeds the grade under this subchapter, grade as a 'theft' offense;
(2) If a victim is physically held hostage for purposes of extortion, grade according to Chapter Two, Subchapter C.

323 Blackmail [threat to injure reputation or accuse of crime]
Grade as a 'theft' offense according to the value of the property demanded, but not less than Category Three. Actual damage to reputation may be considered as an aggravating factor.

SUBCHAPTER D - THEFT AND RELATED OFFENSES

331 Theft, Forgery, Fraud, Trafficking in Stolen Property*, Interstate Transportation of Stolen Property, Receiving Stolen Property, Embezzlement, and Related Offenses
(a) If the value of the property* is more than $500,000, grade as Category Six;

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(b) If the value of the property* is more than $100,000 but not more than $500,000, grade as Category Five;
(c) If the value of the property* is at least $20,000 but not more than $100,000, grade as Category Four;
(d) If the value of the property* is at least $2000 but less than $20,000, grade as Category Three;
(e) If the value of the property* is less than $2000, grade as Category One.
(f) Exceptions:
(1) Offenses involving stolen checks or mail, forgery, fraud, interstate transportation of stolen or forged securities, trafficking in stolen property*, or embezzlement shall be graded as not less than Category Two; *[[Notes and Procedures.* Fraudulent sale of drugs (e.g., sale of sugar as heroin) is graded as 'fraud'.]]
(2) Theft of an automobile shall be graded as no less than Category Three. Note: where the vehicle was recovered within 72 hours with no significant damage and the circumstances indicate that the only purpose of the theft was temporary use (e.g., joyriding), such circumstances may be considered as a mitigating factor. *[[Notes and Procedures.* Theft of truck incidental to theft of cargo. Where the theft of a truck is clearly incidental to the theft of cargo (e.g., the truck is recovered abandoned within 72 hours without significant damage), the value of the truck is not counted.]]
(g) Note: In 'theft' offenses, the total amount of the theft committed or attempted by the offender, or others acting in concert with the offender, is to be used. *[[Notes and Procedures.* Example 331(g)-1: Seven persons in concert commit a theft of $70,000; each receives $10,000. Grade according to the total amount ($70,000). Example 331(g)-2: An offender fraudulently sells stock worth $20,000 for $90,000. Grade according to the loss ($70,000).]]

332 Pickpocketing [stealth-no force or fear]
Grade as a 'theft' offense, but not less than Category Three.

333 Fraudulent Loan Applications
Grade as a 'fraud' offense according to the amount of the loan. *[[Notes and Procedures.* Example 333-1: An offender falsifies collateral of $250,000 to obtain a $50,000 loan. Grade according to the value of the loan ($50,000).]]

334 Preparation or Possession of Fraudulent Documents
(a) If for purposes of committing another offense, grade according to the offense intended;
(b) Otherwise, grade as Category Two.

335 Criminal Copyright Offenses
(a) If very large scale (e.g., more than 100,000 sound recordings or more than 10,000 audio visual works), grade as Category Five;
(b) If large scale (e.g., 20,000-100,000 sound recordings or 2,000-10,000 audio visual works), grade as Category Four;
(c) If medium scale (e.g., 2,000-19,999 sound recordings or 200-1,999 audio visual works), grade as Category Three;
(d) If small scale (e.g., less than 2000 sound recordings or less than 200 audio visual works), grade as Category Two.

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SUBCHAPTER E - COUNTERFEITING AND RELATED OFFENSES

341 Passing or Possession of Counterfeit Currency or Other Medium of Exchange*

(a) If the face value of the currency or other medium of exchange is more than $500,000, grade as Category Six;
(b) If the face value is more than $100,000 but not more than $500,000, grade as Category Five;
(c) If the face value is at least $20,000 but not more than $100,000, grade as Category Four;
(d) If the face value is at least $2000 but less than $20,000, grade as Category Three;
(e) If the face value is less than $2000, grade as Category Two.

342 Manufacture of Counterfeit Currency or Other Medium of Exchange* or Possession of Instruments for Manufacture

Grade manufacture or possession of instruments for manufacture (e.g., a printing press or plates) according to the quantity printed (see passing or possession)), but not less than Category Five. The term 'manufacture' refers to the capacity to print or generate multiple copies; it does not apply to pasting together parts of different notes.

SUBCHAPTER F - BANKRUPTCY OFFENSES

351 Fraud in Bankruptcy or Concealing Property

Grade as a 'fraud' offense.

SUBCHAPTER G - VIOLATION OF SECURITIES OR INVESTMENT REGULATIONS AND ANTITRUST OFFENSES

361 Violation of Securities or Investment Regulations (15 U.S.C. 77ff,80)

(a) If for purposes of fraud, grade according to the underlying offense;
(b) Otherwise, grade as Category Two.

362 Antitrust Offenses

(a) If estimated economic impact is more than one million dollars, grade as Category Four;
(b) If the estimated economic impact is more than $100,000 but not more than one million dollars, grade as Category Three;
(c) Otherwise, grade as Category Two.

[[Notes and Procedures: The term 'economic impact' refers to the estimated loss to any victims (e.g., loss to consumers from a price fixing offense).]]

CHAPTER FOUR - OFFENSES INVOLVING IMMIGRATION, NATURALIZATION, AND PASSPORTS

401 Unlawfully Entering the United States as an Alien

Category Two.

402 Smuggling of Alien(s) into the United States

Category Three.

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403 Offenses Involving Passports

(a) If making an unlawful passport for distribution to another, possession with intent to distribute, or distribution of an unlawful passport, grade as Category Three;

(b) If fraudulently acquiring or improperly using a passport, grade as Category Two.

404 Offenses Involving Naturalization or Citizenship Papers

(a) If forging or falsifying naturalization or citizenship papers for distribution to another, possession with intent to distribute, or distribution, grade as Category Three;

(b) If acquiring fraudulent naturalization or citizenship papers for own use or improper use of such papers, grade as Category Two;

(c) If failure to surrender canceled naturalization or citizenship certificate(s), grade as Category One.

CHAPTER FIVE - OFFENSES INVOLVING REVENUE

SUBCHAPTER A - INTERNAL REVENUE OFFENSES

501 Tax Evasion [income tax or other taxes]

(a) If the amount of tax evaded or evasion attempted is more than $500,000, grade as Category Six;

(b) If the amount of tax evaded or evasion attempted is more than $100,000 but not more than $500,000, grade as Category Five;

(c) If the amount of tax evaded or evasion attempted is at least $20,000 but not more than $100,000, grade as Category Four;

(d) If the amount of tax evaded or evasion attempted is at least $2000 but less than $20,000, grade as Category Three;

(e) If the amount of tax evaded or evasion attempted is less than $2000, grade as Category One.

(f) Notes:

(1) Grade according to the amount of tax evaded or evasion attempted, not the gross amount of income. *[[Notes and Procedures.* Example 501(f)(1)-1: An offender fails to report income of $30,000, thus avoiding $10,000 in taxes; the severity rating is determined by the tax avoided (i.e., $10,000). This amount does not include interest or penalties.]]

(2) Tax evasion refers to failure to pay applicable taxes. Grade a false claim for a tax refund (where tax has not been withheld) as a 'fraud' offense.

502 Operation of an Unregistered Still

Grade as a 'tax evasion' offense.

SUBCHAPTER B - CUSTOMS OFFENSES

511 Smuggling Goods into the United States

(a) If the conduct is for the purpose of tax evasion, grade as a 'tax evasion' offense.

(b) If the article is prohibited from entry to the country absolutely (e.g., illicit drugs or weapons), use the grading applicable to possession with intent to distribute of such articles, or the grading applicable to tax evasion, whichever is higher, but not less than Category Two;

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(c) If the conduct involves breaking seals, or altering or defacing customs marks, or concealing invoices, grade according to (a) or (b), as applicable, but not less than Category Two.

512 Smuggling Goods into Foreign Countries in Violation of Foreign Law (re: 18 U.S.C. 546)
Category Two.

SUBCHAPTER C - CONTRABAND CIGARETTES

521 Trafficking in Contraband Cigarettes (re: 18 U.S.C. 2342)
Grade as a tax evasion offense.

CHAPTER SIX - OFFENSES INVOLVING GOVERNMENTAL PROCESS

SUBCHAPTER A - IMPERSONATION OF OFFICIALS

601 Impersonation of Official
(a) If for purposes of commission of another offense, grade according to the offense attempted, but not less than Category Two;
(b) Otherwise, grade as Category Two.

SUBCHAPTER B - OBSTRUCTING JUSTICE

611 Perjury
(a) If the perjured testimony concerns another offense, grade as 'accessory after the fact', but not less than Category Three;
(b) Otherwise, grade as Category Three.
(c) Suborning perjury, grade as perjury.

612 Unlawful False Statements Not Under Oath
Category One.

613 Tampering With Evidence or Witness, Victim, Informant, or Juror
(a) If concerning a criminal offense, grade as 'accessory after the fact', but not less than Category Three;.
(b) Otherwise, grade as Category Three.
(c) Exception: Intimidation by threat of physical harm, grade as not less than Category Five.

614 Misprision of a Felony*
Grade as if 'accessory after the fact' but not higher than Category Three.

615 Harboring a Fugitive
Grade as 'accessory after the fact' but not higher than Category Three. Use the category of the offense for which the fugitive is wanted as the underlying offense. *[[Notes and Procedures.* Harboring a fugitive is graded as 'accessory after the fact' to the offense for which the fugitive is wanted, but not higher than Category Three. In the case of a fugitive who is an escapee, the 'offense for which the fugitive is wanted' is considered to be the escape or the offense for which the fugitive was being held, whichever is higher.]]

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616 Escape

If in connection with another offense for which a severity rating can be assessed, grade the underlying offense and apply the rescission guidelines to determine an additional penalty. Otherwise, grade as Category Three. *[[Notes and Procedures.* Grade as Category Three only if the underlying offense behavior cannot be established in accord with Commission regulations (e.g., where the information is insufficient to establish that the offender committed the underlying offense).]]

617 Failure to Appear*

(a) In Felony Proceedings. If in connection with an offense for which a severity rating can be assessed, add to the guidelines otherwise appropriate the following: (i) <=6 months if voluntary return within 6 days, or (ii) 6-12 months in any other case. Otherwise, grade as Category Three. *[[Notes and Procedures.* Grade as Category Three only if the underlying offense behavior cannot be established in accord with Commission regulations (e.g., where the information is insufficient to establisn that the offender committed the underlying offense).]]

(b) In Misdemeanor Proceedings. Grade as Category One. *[[Notes and Procedures.* In the case of a failure to appear on a misdemeanor charge, grade the failure to appear and the underlying charge (if it can be established under Commission regulations) as multiple separate offenses. Example 617(b)-1: A parolee fails to appear on a misdemeanor charge involving theft of $400. Since the proceeding is a misdemeanor proceeding, the failure to appear is graded as Category One. If the parolee is also convicted of the theft, or if the Commission makes an independent finding of the theft, apply the multiple separate offense procedure.]]

(c) Note: For purposes of this subsection, a misdemeanor is defined as an offense for which the maximum penalty authorized by law (not necessarily the penalty actually imposed) does not exceed one year.

618 Contempt of Court

(a) Criminal Contempt. Where imposed in connection with a prisoner serving a sentence for another offense, add <=6 months to the guidelines otherwise appropriate. *[[Notes and Procedures.*
'Criminal Contempt' refers to conduct under 18 U.S.C. 402 (punishable by up to six months). If a criminal sentence of more than one year is imposed under 18 U.S.C. 401 for refusal to testify concerning a criminal offense, such conduct normally should be graded as if 'accessory after the fact'.]]

(b) Civil Contempt. See 28 C.F.R. 2.10.

SUBCHAPTER C - OFFICIAL CORRUPTION

621 Bribery or Extortion [use of official position - no physical threat]

(a) Grade as a 'theft offense' according to value of the bribe, demand, or the favor received (whichever is greater), but not less than Category Three. *[[Notes and Procedures.* Example 621-1: A federal employee accepts a $10,000 bribe to approve a fraudulent claim of $80,000. The applicable value to be used in grading this offense is $80,000.]]

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(b) If the above conduct involves a pattern of corruption (e.g., multiple instances over a period exceeding six months), grade as not less than Category Four.
(c) If the purpose of the conduct is the obstruction of justice, grade as if 'perjury'.
(d) Notes:
(1) The grading in this subchapter applies to each party to a bribe.
(2) The extent to which the criminal conduct involves a breach of public trust, causing injury beyond that describable by monetary gain, may be considered as an aggravating factor.

622 Other Unlawful Use of Governmental Position
Category Two.

CHAPTER SEVEN - OFFENSES INVOLVING INDIVIDUAL RIGHTS

SUBCHAPTER A - OFFENSES INVOLVING CIVIL RIGHTS

701 Conspiracy Against Rights of Citizens (re: 18 U.S.C. 241)
(a) If death results, grade as Category Eight;
(b) Otherwise, grade as if 'assault'.

702 Deprivation of Rights Under Color of Law (re: 18 U.S.C. 242)
(a) If death results, grade as Category Eight;
(b) Otherwise, grade as if 'assault'.

703 Federally Protected Activity (re: 18 U.S.C. 245)
(a) If death results, grade as Category Eight;
(b) Otherwise, grade as if 'assault'.

704 Intimidation of Persons in Real Estate Transactions Based on Racial Discrimination (re: 42 U.S.C. 3631)
(a) If death results, grade as Category Eight;
(b) Otherwise, grade as if 'assault'.

705 Transportation of Strikebreakers (re: 18 U.S.C. 1231)
Category Two.

SUBCHAPTER B - OFFENSES INVOLVING PRIVACY

711 Interception and Disclosure of Wire or Oral Communications
(re: 18 U.S.C. 2511)
Category Two.

712 Manufacture, Distribution, Possession, and Advertising of Wire or Oral Communication Intercepting Devices (re: 18 U.S.C. 2512)
(a) Category Three.
(b) Exception: If simple possession, grade as Category Two.

713 Unauthorized Opening of Mail
Category Two.

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CHAPTER EIGHT - OFFENSES INVOLVING EXPLOSIVES AND WEAPONS

SUBCHAPTER A - EXPLOSIVES OFFENSES AND OTHER DANGEROUS ARTICLES

801 Unlawful Possession of Explosives; or Use of Explosives During a Felony
Grade according to offense intended, but not less than Category Five.

802 Mailing Explosives or Other Injurious Articles with Intent to Commit a Crime
Grade according to offense intended, but not less than Category Five.

803 Improper Transportation or Marking (re: 18 U.S.C. 832, 833, 834)
(a) If resulting in death or serious bodily injury, grade as Category Four;
(b) Otherwise, grade as Category Three.

SUBCHAPTER B - FIREARMS

811 Possession by Prohibited Person (e.g., ex-felon)
Category Three.
[[Notes and Procedures. Aliens illegally in the United States are also prohibited by federal law from possession of firearms.]]

812 Unlawful Possession or Manufacture of Sawed-off Shotgun, Machine Gun, Silencer, or Assassination kit*
(a) If silencer or assassination kit*, grade as Category Six;
(b) If sawed-off shotgun or machine gun, grade as Category Five.
[[Notes and Procedures. (1) Consider unlawful possession of a weapon combined with other offenses under the multiple separate offense procedure of Chapter Thirteen. (2) Possession/manufacture of a sawed-off rifle is graded as Category Three.]]

813 Unlawful Distribution of Weapons or Possession with Intent to Distribute
(a) If silencer(s) or assassination kit(s)*, grade as Category Six;
(b) If sawed-off shotgun(s) or machine gun(s), grade as Category Five;
(c) If multiple weapons (rifles, shotguns, or handguns), grade as Category Four;
(d) If single weapon (rifle, shotgun, handgun), grade as Category Three.

CHAPTER NINE - OFFENSES INVOLVING ILLICIT DRUGS

SUBCHAPTER A - HEROIN AND OPIATE* OFFENSES

901 Distribution or Possession with Intent to Distribute
(a) If extremely large scale (e.g., involving 3 kilograms or more of 100% pure heroin, or equivalent amount), grade as Category Eight [except as noted in (c) below];
(b) If very large scale (e.g., involving 1 kilogram but less than 3 kilograms of 100% pure heroin, or equivalent amount), grade as Category Seven [except as noted in (c) below];
(c) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) or (b) as Category Six;
(d) If large scale (e.g., involving 50-999 grams of 100% pure heroin, or equivalent amount), grade as Category Six [except as noted in (e) below];

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(e) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (d) as Category Five.
(f) If medium scale (e.g., involving 5-49 grams of 100% pure heroin, or equivalent amount), grade as Category Five;
(g) If small scale (e.g., involving less than 5 grams of 100% pure heroin, or equivalent amount), grade as Category Four [except as noted in (h) below];
(h) If evidence of opiate dependence and very small scale (e.g., involving less than 1.0 grams of 100% pure heroin, or equivalent amount), grade as Category Three.

902 Simple Possession
Category One.

[[Notes and Procedures. (1) The following list contains drugs classified as opiates/synthetic opiate substances (21 C.F.R. 1308):

Acetorphine
Acetyldihydrocodeine
Acetylmethadol
Allylprodine
Alphacetylmethadol
Alphameprodine
Alphamethadol
Alpha-methylfentanyl Propionanilide
Alphaprodine
Anileridine
Benzethidine
Benzylmorphine
Betacetylmethadol
Betameprodine
Betamethadol
Betaprodine
Bezitramide
Clonitazene
Codeine
Codeine Methylbromide
Codeine-N-Oxide
Cyprenorphine
Desomorphine
Dextromoramide
Dextropropoxyphene (Bulk non-dosage form)
Diampromide
Diethylthiambutene
Difenoxin
Dihydrocodeine
Dihydromorphine
Dimenoxadol
Dimepheptanol
Dimethylthiambutene
Dioxaphetyl butyrate
Diphenoxylate
Dipipanone
Drotebanol
Ethylmethylthiambutene
Ethylmorphine
Etonitazene
Etorphine
Etorphine hydrochloride
Etoxeridine
Fentanyl
Furethidine
Heroin
Hydrocodone
Hydromorphinol
Hydromorphone
Hydroxypethidine
Isomethadone
Ketobemidone
Levomethorpan
Levomoramide
Levophenacylmorphan
Levorphanol
Metazocine
Methadone
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane
Methyldesorphine
Methyldihydromorphine
Metopon
Morpheridine
Morphine
Morphine Methylbromide
Morphine Methylsulfonate
Morphine-N-Oxide
Moramide
Moramide-Intermediate, 2-methyl-3 morpholino-1, 1-diphenylpropane-carboxylic acid
Myrophine
Nicocodeine
Nicomorphine
Noracymethadol
Norlevorphanol
Normethadone
Normorphine
Norpipanone
Opium
  Raw Opium
  Opium Extracts
  Opium Fluid Extracts
  Powdered Opium
  Granulated Opium
  Tincture of Opium
Oxycodone
Oxymorphone
Pethidine (meperidine)
Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine
Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate
Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid
Phenadoxone
Phenampromide
Phenazocine
Phenomorphan
Phenoperidine
Pholcodine
Piminodine
Piritramide
Proheptazine
Properidine
Propiram
Racemethorphan
Racemoramide
Racemorphan
Sufentanil
Thebacon
Thebaine
Tilidine
Trimeperidine

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(2) Certain drugs such as Talwin have opiate characteristics but are not counted as opiates/synthetic opiate substances in determining the offense severity.

(3) In accordance with 21 C.F.R. 1308, dextropropoxyphene will be counted as an opiate in determining the offense severity only when it is found in bulk form (not when found in capsule form prepared under the brand name of Darvon).

(4) Common Brand Names of Opiates (this list is not inclusive):

Amidone (Methadone)
Demerol (Pethidine)
Dilaudid (Hydromorphone)
Dolophine (Methadone)
Dover's Powder (Opium)
Dromoran (Racemorphan)
Ethnine (Pholcodine)
Heptalgin (Phenadoxone)
Hycodan (Hydrocodone)
Leritine (Anileridine)
Levo-Dromoran (Levorphanol)
Levorphan (Levorphanol)
Methadose (Methadone)
Nisentil (Alphaprodine)
Nucodan (Oxycodone)
Numorphan (Oxymorphone)
Palfium (Dextromoramide)
Paracodin (Dihydrocodeine)
Paragoric (Opium)
Percodan (Oxycodone)
Pethadol (Pethidine)
Pholdine (Pholocodine)
Pipadone (Dipipanone)
Prinadol (Phenazocine)

(5) Conversion of Common Opiates to Heroin Equivalent. Use the following chart to convert common opiates to their heroin equivalent (e.g., 67.4 grams of pure methadone x .3 = 20.22 grams of pure heroin equivalent; 42.6 grams of pure hydromorphone x 2 = 85.2 grams of pure heroin equivalent):

1 gm. alphaprodine = .09 gm. heroin
1 gm. anileridine = .1 gm. heroin
1 gm. codeine = .02 gm. heroin
1 gm. dextromoramide = .4 gm. heroin
1 gm. dextropropoxyphene = .01 gm heroin
1 gm. dihydrocodeine = .05 gm. heroin
1 gm. dipipanone = .12 gm. heroin
1 gm. hydromorphone = 2 gms. heroin
1 gm. levorphanol = 1 gm. heroin
1 gm. methadone = .3 gm. heroin
1 gm. metopon = .86 gm. heroin
1 gm. morphine = .3 gm. heroin
1 gm. opium = .03 gm. heroin
1 gm. oxycodone = .2 gm. heroin
1 gm. oxymorphone = 2 gms. heroin
1 gm. paragoric = .003 gm. heroin
1 gm. pethidine (meperidine) = .03 gm. heroin
1 gm. phenadoxone = .15 gm. heroin
1 gm. racemorphan = .6 gm. heroin]].

SUBCHAPTER B - MARIHUANA AND HASHISH OFFENSES

911 Distribution or Possession with Intent to Distribute

(a) If extremely large scale (e.g., involving 20,000 pounds or more of marihuana/6,000 pounds or more of hashish/600 pounds or more of hash oil), grade as Category Six [except as noted in (b) below];

(b) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) as Category Five;

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(c) If very large scale (e.g., involving 2,000-19,999 pounds of marihuana/600-5,999 pounds of hashish/60-599 pounds of hash oil), grade as Category Five;
(d) If large scale (e.g., involving 200-1,999 pounds of marihuana/60-599 pounds of hashish/6-59.9 pounds of hash oil), grade as Category Four;
(e) If medium scale (e.g., involving 50-199 pounds of marihuana/15-59.9 pounds of hashish/1.5-5.9 pounds of hash oil), grade as Category Three;
(f) If small scale (e.g., involving 10-49 pounds of marihuana/3-14.9 pounds of hashish/.3-1.4 pounds of hash oil), grade as Category Two;
(g) If very small scale (e.g., involving less than 10 pounds of marihuana/less than 3 pounds of hashish/less than .3 pounds of hash oil), grade as Category One.

912 Simple Possession

Category One.

[[Notes and Procedures. (1) 1 liter of hash(ish) oil in liquid form = 2.2 lbs. of hash oil in solid form. (2) Marihuana offenses are normally graded by bulk quantity. In determining quantity for guideline purposes, all parts of the marihuana plant as seized and weighed in bulk (e.g., from a shipment of marihuana being imported), or as negotiated for sale if no seizure is made, are counted. Occasionally, it may be necessary to estimate the scale of the offense from acreage under cultivation or from the number of plants seized. In the absence of more specific information, use the following minimum estimates provided by the DEA. Grade 1 plant as equivalent to attempted production of 1/4 lb. of useable marihuana. Note: In the United States, marihuana is frequently grown interspersed with other crops to disguise the marihuana. In such cases, estimate 500 marihuana plants (125 lbs.) per acre. Where marihuana is the only crop under cultivation (e.g., in certain foreign locations), estimate 4,000 plants (1000 lbs.) per acre.]]

SUBCHAPTER C - COCAINE OFFENSES

921 Distribution or Possession with Intent to Distribute

(a) If extremely large scale (e.g., involving 15 kilograms or more of 100% purity, or equivalent amount), grade as Category Eight [except as noted in (c) below];
(b) If very large scale (e.g., involving 5 kilograms but less than 15 kilograms of 100% purity, or equivalent amount), grade as Category Seven [except as noted in (c) below];
(c) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) or (b) as Category Six;
(d) If large scale (e.g., involving more than 1 kilogram but less than 5 kilograms of 100% purity, or equivalent amount), grade as Category six [except as noted in (e) below];
(e) Where the Commission finds that the offender had only a peripheral role, grade conduct under (d) as Category Five;
(f) If medium scale (e.g., involving 100 grams-1 kilogram of 100% purity, or equivalent amount), grade as Category Five;
(g) If small scale (e.g., involving 5-99 grams of 100% purity, or equivalent amount), grade as Category Four;
(h) If very small scale (e.g., involving 1.0-4.9 grams of 100% purity, or equivalent amount), grade as Category Three.
(i) If extremely small scale (e.g., involving less than 1 gram of 100% purity, or equivalent amount), grade as Category Two.

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922 Simple Possession
Category One.

SUBCHAPTER D - OTHER ILLICIT DRUG OFFENSES*

931 Distribution or Possession with Intent to Distribute
(a) If very large scale (e.g., involving more than 200,000 doses), grade as Category Six [except as noted in (b) below];
(b) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) as Category Five;
(c) If large scale (e.g., involving 20,000-200,000 doses), grade as Category Five;
(d) If medium scale (e.g., involving 1,000-19,999 doses), grade as Category Four;
(e) If small scale (e.g., involving 200-999 doses), grade as Category Three;
(f) If very small scale (e.g., involving less than 200 doses), grade as Category Two.

932 Simple Possession
Category One.
[[Notes and Procedures. Dosage Units. A dose of a drug is equivalent to 1 capsule, tablet, cigarette, gelatin square or other common unit of sale. If the drug is in bulk form, the lab report from DEA should have converted the drug to doses. This information should be in the Presentence Report. If this information is not available, DEA has supplied the following dosage equivalents for certain common drugs:

HALLUCINOGENS

Anhalamine	300 mg.
Anhalonide	300 mg.
Anhalonine	300 mg.
Bufotenine	1 mg.
Diethyltryptamine	60 mg.
Dimethyltryptamine	50 mg.
Lophophorine	300 mg.
LSD (Lysergic acid diethylamide)	.1 mg.
LSD tartrate	.05 mg.
MDA	100 mg.
Mescaline	500 mg.
PCP	5 mg.
Pellotine	300 mg.
Peyote	12 mg.
Psilocin	10 mg.
Psilocybin	10 mg.
STP (DOM) Dimethoxyamphetamine	3 mg.

DEPRESSANTS

Barbituates	100 mg.
Brallobarbital	30 mg.
Eldoral	100 mg.
Eunarcon	100 mg.
Hexethel	100 mg.
Methaqualone	300 mg.
Thiobarbital	50 mg.
Thiohexethal	60 mg.

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STIMULANTS

Amphetamines	10 mg.
Ethylamphetamine HCL	12 mg.
Ethylamphetamine SO4	12 mg.
Methamphetamine combinations	5 mg.
Methamphetamines	5 mg.
Preludin	25 mg.

The dosage equivalents supplied by the DEA represent the amount of the pure drug that is contained in an average dose. For example, 10 milligrams (mg.) of amphetamine per dose means 10 milligrams of pure amphetamine per dose. Thus, if an offender was in possession of 50 grams of a powder which tested to be 20% pure amphetamine, the appropriate calculations would be as follows: 50 grams x 1000 = 50,000 milligrams [conversion from grams to milligrams]; 50,000 milligrams x .20 purity = 10,000 milligrams of pure amphetamine [conversion to pure amphetamine]; 10,000 milligrams / 10 milligrams per dose = 1,000 doses [division by the number of milligrams per dose]. In this example, the bulk quantity would convert to 1,000 doses of amphetamine.]]

--- NOTES TO CHAPTER NINE

(1) **Grade manufacture of synthetic illicit drugs as listed above, but not less than Category Five.** *[[Notes and Procedures.* (a) Grade manufacture of synthetic illicit drugs according to the amount actually manufactured, but not less than Category Five. Note: because of the variety of chemical processes that may be used and the differential in skill of the individuals involved, estimates as to how much a laboratory could produce in the future from materials at hand may vary widely and, thus, are not used in assessing the severity rating. (b) Grade unlawful possession or distribution of precursors of illicit drugs as Category Five (i.e., aiding and abetting the manufacture of synthetic illicit drugs).]]

(2) **'Equivalent amounts' for the cocaine and opiate categories may be computed as follows: 1 gram of 100% pure is equivalent to 2 grams of 50% pure and 10 grams of 10% pure, etc.**

[[Notes and Procedures. Drug Offense Severity Calculations.

(a) Opiate/cocaine offenses are normally graded according to the quantity/purity of the drug involved. Marihuana/hashish offenses are normally graded by bulk quantity. Other illicit drug offenses are normally graded by the number of doses.

(b) If (and only if) the above information is not available, it may be possible to determine the appropriate severity rating from other information in the file (e.g., the probation report may report the street value of the drugs involved, see Street Value Chart).

(c) The severity of drug offenses is to be classified by *scale*. In some cases, the drugs actually confiscated may not accurately reflect the scale of the offense. For example, convincing evidence of negotiations and transactions of large quantities of drugs over a long period of time may be a more appropriate basis for rating the scale of the drug offense than weight/purity if the evidence shows that only one of many shipments was actually confiscated by authorities. Any evidence used to assess the offense severity must meet the preponderance standard, and the facts relied upon must be noted specifically on the Notice of Action.

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(d) *Measurement Conversion Chart*

1 ounce = 28.35 grams	1 gallon = 3.8 liters
1 pound = 453.6 grams	1 quart = .95 liters
1 pound = .45 kilograms	1 kilogram = 1,000 grams
1 kilogram = 2.2 pounds	1 gram = 1,000 milligrams

(e) *How to Convert to 'equivalent amounts'*. The following formula is to be used in calculating 100% pure equivalency for cocaine and heroin offenses:

Quantity Involved	X	Actual Purity
[expressed in grams]		[expressed as a decimal]

Example (1) If the offense involved 3 ounces of 32.6% pure cocaine, it is first necessary to convert ounces to grams, and then to multiply by the purity expressed as a decimal (i.e., .326). The necessary calculations are:

3	X	28.35	X	.326	=	27.73 grams
(ounces)		(# of grams in an ounce)		(purity)		(100% pure)

Example (2) If the offense involved one-half ounce of 7% pure heroin the necessary calculations are:

.5	X	28.35	X	.07	=	.99 grams
(ounces)		(# of grams in an ounce)		(purity)		(100% pure)

Example (3) If the offense involved 68 grams of 23% pure heroin, the only conversion necessary is to pure heroin equivalency, i.e.:
68 (grams X .23) (purity) = 15.64 grams (100% purity)

(f) Occasionally, reference will be made in the PSI to the DEA lab report (DEA Form 7). This form is somewhat complicated in that 'gross weight' refers to the weight of drugs, plus adulterants, plus the container. 'Net weight' refers to the drugs plus the adulterants. 'Total net', which is equal to 'net weight x purity', refers to the weight of the pure drug. It is the 'total net' figure, the weight of the pure drug, that is used to assess offense severity.

(g) *Street Value Chart*. Where more specific information (e.g., weight/purity) is not available, the following listing may be used to convert a 'street value' estimate (an estimate of the value of the drugs if sold retail) to the 'scale of the offense'.

Cocaine
extremely large scale ($12 million or more)
very large scale ($4 million but less than $12 million)
large scale (more than $800,000 but less than $4 million)
medium scale ($80,000-$800,000)
small scale ($4,000-$79,999)
very small scale ($800-$3,999)
extremely small scale (less than $800)

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Heroin
extremely large scale ($6 million or more)
very large scale ($2 million but less than $6 million)
large scale ($100,000 but less than $2 million)
medium scale ($10,000 but less than $100,000)
small scale (less than $10,000)
very small scale (less than $2,000 and evidence of opiate addiction)

Other Illicit Drugs
very large scale (more than $200,000)
large scale ($20,000-$200,000)
medium scale ($1,000-$19,999)
small scale ($200-$999)
very small scale (less than $200)

(h) *Determining Offense Severity Relative to Simple Possession of Drugs*. In certain cases, the Commission must determine whether the offense behavior should be considered as "simple possession" of a controlled substance or "possession with intent to distribute". In making this determination, the Commission shall examine a variety of factors (if available). These factors are shown below. The presence of any of the following factors may be considered as a presumption of possession with intent to distribute. However, this presumption may be rebutted if there are circumstances in the individual case which indicate that there was no intention to distribute.

(1) *Weight/amount/purity of the substance*: Possession of the following amounts of controlled substances are presumed to indicate possession with intent to distribute:

Heroin	1 gm. at 100% purity, or equivalent amount; or more
Cocaine	5 gms. at 100% purity, or equivalent amount; or more
Marijuana	10 lbs. or more
Hashish	3 lbs. or more
Hash Oil	.3 lbs. or more
Drugs (other than above)	1,000 doses or more

(2) *Other Factors*: The presence of any of the following factors may be considered indicative of intent to distribute: the substance has been separated into multiple, individual packets; the offender is a non-user of the substance in question; the presence of instruments used in preparing a substance for sale (e.g., a scale) or a large amount of cash at the scene of the arrest; or the offender was seized with the substance while traveling or was arrested with the substance soon after traveling.]]

CHAPTER TEN - OFFENSES INVOLVING NATIONAL DEFENSE

SUBCHAPTER A - TREASON AND RELATED OFFENSES

1001 Treason
Category Eight.

1002 Rebellion or Insurrection
Category Seven.

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SUBCHAPTER B - SABOTAGE AND RELATED OFFENSES

1011 Sabotage
Category Eight.

1012 Enticing Desertion
(a) In time of war or during a national defense emergency, grade as Category Four;
(b) Otherwise, grade as Category Three.

1013 Harboring or Aiding a Deserter
Category One.

SUBCHAPTER C - ESPIONAGE AND RELATED OFFENSES

1021 Espionage
Category Eight.

SUBCHAPTER D - SELECTIVE SERVICE OFFENSES

1031 Failure to Register, Report for Examination or Induction
(a) If committed during time of war or during a national defense emergency, grade as Category Four;
(b) If committed when draftees are being inducted into the armed services, grade as Category Three;
(c) Otherwise, grade as Category One.

SUBCHAPTER E - OTHER NATIONAL DEFENSE OFFENSES

1041 Offenses Involving Nuclear Energy
Unauthorized production, possession, or transfer of nuclear weapons or special nuclear material or receipt of or tampering with restricted data on nuclear weapons or special nuclear material, grade as Category Eight.

1042 Violations of Export Administration Act (Re: 50 U.S.C. 2410)
Grade conduct involving "national security controls" or "nuclear nonproliferation controls" as Category Six. *[[Notes and Procedures.* Conduct not covered by the above described parameters is to be graded under Chapter Twelve.]]

1043 Violations of the Arms Control Act (Re: 22 U.S.C. 2778)
(a) Grade conduct involving export of sophisticated weaponry (e.g., aircraft, helicopters, armed vehicles, or "high technology" items) as Category Six.
(b) Grade conduct involving export of other weapons (e.g., rifles, handguns, machine guns, or hand grenades) as if a weapons/explosive distribution offense under Offenses Involving Explosives and Weapons (Chapter Eight).

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CHAPTER ELEVEN - OFFENSES INVOLVING ORGANIZED CRIME ACTIVITY, GAMBLING, OBSCENITY, SEXUAL EXPLOITATION OF CHILDREN, PROSTITUTION, AND NONGOVERNMENTAL BRIBERY

SUBCHAPTER A - ORGANIZED CRIME OFFENSES

1101 Racketeer Influence and Corrupt Organizations (re: 18 U.S.C. 1961-63)
Grade according to the underlying offense attempted, but not less than Category Five.

1102 Interstate or Foreign Travel or Transportation in Aid of Racketeering Enterprise (re: 18 U.S.C. 1952)
Grade according to the underlying offense attempted, but not less than Category Three.

SUBCHAPTER B - GAMBLING OFFENSES

1111 Gambling Law Violations - Operating or Employment in an Unlawful Business (re: 18 U.S.C. 1955)
(a) If large scale operation [e.g., Sports books (estimated daily gross more than $15,000); Horse books (estimated daily gross more than $4,000); Numbers bankers (estimated daily gross more than $2,000); Dice or card games (estimated daily 'house cut' more than $1,000)]; grade as Category Four;
(b) If medium scale operation [e.g., Sports books (estimated daily gross $5,000 - $15,000); Horse books (estimated daily gross $1,500 - $4,000); Numbers bankers (estimated daily gross $750 - $2,000); Dice or card games (estimated daily 'house cut' $400 - $1,000)]; grade as Category Three;
(c) If small scale operation [e.g., Sports books (estimated daily gross less than $5,000); Horse books (estimated daily gross less than $1,500); Numbers bankers (estimated daily gross less than $750); Dice or card games (estimated daily 'house cut' less than $400)]; grade as Category Two;
(d) Exception: Where it is established that the offender had no proprietary interest or managerial role, grade as Category One.

1112 Interstate Transportation of Wagering Paraphenalia (re: 18 U.S.C. 1953)
Category Three.

1113 Wire Transmission of Wagering Information (re: 18 U.S.C. 1084)
Grade as if 'operating a gambling business'.

1114 Operating or Owning a Gambling Ship (re: 18 U.S.C. 1082)
Category Three.

1115 Importing or Transporting Lottery Tickets; Mailing Lottery Tickets or Related Matter (re: 18 U.S.C. 1301, 1302)
(a) Grade as if 'operating a gambling business';
(b) Exception: If non-commercial, grade as Category One.

SUBCHAPTER C - OBSCENITY

1121 Mailing, Importing, or Transporting Obscene Matter
(a) If for commercial purposes, grade as Category Three;
(b) Otherwise, Category One.

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*Terms marked by an asterisk are defined in Chapter Thirteen.

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1122 Broadcasting Obscene Language
Category One.

SUBCHAPTER D - SEXUAL EXPLOITATION OF CHILDREN

1131 Sexual Exploitation of Children* (re: 18 U.S.C. 2251, 2252)
(a) Category Six;
(b) Exception: Where the Commission finds the offender had only a peripheral role (e.g., a retailer receiving such material for resale but with no involvement in the production or wholesale distribution of such material), grade as Category Five.

SUBCHAPTER E - PROSTITUTION AND WHITE SLAVE TRAFFIC

1141 Interstate Transportation for Commercial Purposes
(a) If physical coercion, or involving person(s) of age less than 16, grade as Category Six;
(b) If involving person(s) of ages 16-17, grade as Category Five;
(c) Otherwise, grade as Category Four.
[[Notes and Procedures. The term 'for commercial purposes' refers to procuring a sexual partner for another for profit.]]

1142 Prostitution
Category One.

SUBCHAPTER F - NON-GOVERNMENTAL BRIBERY

1151 Bribery not Involving Federal, State, or Local Government Officials
(a) If the value of the bribe or of the favor received (whichever is greater) is $20,000 or more, grade as Category Three; otherwise, grade as Category Two.
(b) If the conduct involves bribery in a sporting contest, grade as Category Three.
[[Notes and Procedures. If the offender's conduct involves extortion without threat of physical harm to person or property, and does not involve federal, state, or local officials, grade as a 'theft' offense according to the value of the demand if such grading is higher than specified under Offense 1151.]]

SUBCHAPTER G - CURRENCY OFFENSES

1161 Currency Offenses (e.g., laundering money)
(a) If very large scale (e.g., the estimated gross amount of currency involved is more than $500,000), grade as Category Six;
(b) If large scale (e.g., the estimated gross amount of currency involved is more than $100,000 but not more than $500,000), grade as Category Five;
(c) If medium scale (e.g., the estimated gross amount of currency involved is at least $20,000 but not more than $100,000), grade as Category Four;
(d) If small scale (e.g., the estimated gross amount of currency involved is less than $20,000), grade as Category Three.

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*Terms marked by an asterisk are defined in Chapter Thirteen.

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CHAPTER TWELVE - MISCELLANEOUS OFFENSES

If an offense behavior is not listed, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed in Chapters One - Eleven. If, and only if, an offense behavior cannot be graded by reference to Chapters One - Eleven, the following formula may be used as a guide.

Maximum Sentence Authorized by Statute [Not necessarily the sentence imposed]	Grading (Category)
< 2 yrs	1
2 - 3 yrs	2
4 - 5 yrs	3
6 - 10 yrs.	4
11 - 20 yrs.	5
21 - 29 yrs.	6
30 yrs - life	7

CHAPTER THIRTEEN - GENERAL NOTES AND DEFINITIONS

SUBCHAPTER A - GENERAL NOTES

1. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.

2. If an offense behavior involved multiple separate offenses, the severity level may be increased. Exception: in cases graded as Category Seven, multiple separate offenses are to be taken into account by consideration of a decision above the guidelines rather than by increasing the severity level. *[[Notes and Procedures.* (a) In certain instances, the guidelines specify how multiple offenses are to be rated. In offenses rated by monetary loss (e.g., theft and related offenses, counterfeiting, tax evasion) or drug offenses, the total amount of the property or drugs involved is used as the basis for the offense severity rating (e.g., a number of check thefts should ordinarily be treated according to the total loss, rather than as multiple separate offenses). In instances not specifically covered in the guidelines, the decision-makers must exercise discretion as to whether or not the multiple offense behavior is sufficiently aggravating to justify increasing the severity rating. The following chart is intended to provide guidance in assessing whether the severity of multiple offenses is sufficient to raise the offense severity level; it is not intended as a mechanical rule.

MULTIPLE SEPARATE OFFENSES

Severity	*Points*	*Severity*	*Points*
Category One	= 1/9	Category Five	= 9
Category Two	= 1/3	Category Six	= 27
Category Three	= 1	Category Seven	= 45
Category Four	= 3		

Examples: 3 Category Five Offenses [3x(9)=27] = Category Six
5 Category Five Offenses [5x(9)=45] = Category Seven
2 Category Six Offenses [2x(27)=54] = Category Seven

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(b) *The term 'multiple separate offenses' generally refers to offenses committed at different times.* However, there are certain circumstances in which offenses committed at the same time are properly considered multiple separate offenses for the purpose of establishing the offense severity rating. These include (a) unrelated offenses, and (b) offenses involving the unlawful possession of weapons during commission of another offense.

Examples:
(1) An offender commits a robbery (Category Five) in which he steals $80,000 (Category Four). Because the offenses occurred at the same time and are related, grade in the highest applicable category (Category Five) and not as multiple separate offenses.
(2) An offender commits a robbery (Category Five) in which shots are fired to scare the bank employees (Category Six). Because the offenses occurred at the same time and are related, grade in the highest applicable category (Category Six) and not as multiple separate offenses.
(3) An offender when arrested for smuggling aliens is found also in possession of $8,000 worth of stolen goods. Even though the offenses were discovered at the same time, they are unrelated; therefore consideration under the multiple separate offenses procedure is appropriate.
(4) An offender commits two robberies with a sawed-off shotgun. Grade under the multiple offense procedure as 3 Category Five offenses (3 x 9 = 27 points) = Category Six.
(5) An offender robs four banks and each time he uses a sawed-off shotgun. The offense severity is based upon four robberies (4 x 9 points = 36 points) and one offense of possessing a sawed-off shotgun (9 points) for a total offense rating of Category Seven (45 points). Note that possession of a sawed-off shotgun is treated as one offense for purposes of calculating the offense severity even though the weapon was used to rob four separate banks.

(c) For offenses *graded according to monetary value (e.g., theft) and drug offenses*, the severity rating is based on the amount or quantity involved and not on the number of separate instances.

Examples:
(6) An offender forges ten $1,000 checks for a total of $10,000, and is then arrested. Grade as a $10,000 forgery, not ten separate offenses.
(7) An offender steals for resale four automobiles worth a total of $18,000, and is later arrested. Grade as an $18,000 theft, not four separate offenses.
(8) An offender breaks into a store, steals $18,000 worth of merchandise and does $4,000 damage to the store. Grade as a Category Four offense according to the combined property loss ($18,000 + $4,000 = $22,000).
(9) An offender sells 10 grams of pure heroin on four separate occasions, and is later arrested. Grade as a sale of 40 grams of pure heroin and not four separate offenses.
(10) The offender sells 14,000 doses of PCP and 1,000 lbs. of marijuana. He is then arrested. The amount of the drugs is added together based upon a proportion of the amount of drugs involved in the offense compared to the amount of the drugs needed to raise the offense to the next higher category. In this example, 14,000 doses of PCP is 70% of the amount needed to rate the offense as Category Five and 1,000 lbs. of marijuana is 50% of the amount needed to rate the offense as Category Five. The PCP and marijuana added together equal over 100% of the amount of drugs necessary for a Category Five rating, which is the correct severity rating for this offense.

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(11) An offender (with a proprietary role) sells 10,000 lbs. of hashish (Category Six) and 250,000 doses of amphetamines (Category Six). He is then arrested. The applicable offense rating is Category Six which is the highest severity category for any combined amount of the above drugs.

(d) *Intervening Arrests*. Where offenses ordinarily graded by aggregation of value/quantity (e.g., property or drug offenses) are separated by an intervening arrest, grade (1) by aggregation of value/quantity or (2) as multiple separate offenses, whichever results in a higher severity category.

Examples:
(12) An offender commits 3 Category One larcenies (each $300). Each time the offender is arrested during the act. Ordinarily, such behavior would be graded as Category One (theft of $900). But since the offenses were each separated by intervening arrests, application of the multiple separate offense procedure (3 x 1/9 = 1/3 points) results in a higher severity category. Therefore, grade as Category Two.
(13) An offender is arrested on three separate occasions unlawfully transporting aliens. Since the offenses were separated by intervening arrests, grade as Category Four (3 x 1 ≟ 3 points).

(e) *Income Tax Violations Related to Other Criminal Activity*. Where the circumstances indicate that the offender's income tax violations are related to failure to report income from other criminal activity (e.g., failure to report income from a fraud offense) grade as tax evasion or according to the underlying criminal activity established, whichever is higher. Do not grade as multiple separate offenses.]]

3. In cases where multiple sentences have been imposed (whether consecutive or concurrent, and whether aggregated or not) an offense severity rating shall be established to reflect the overall severity of the underlying criminal behavior. This rating shall apply whether or not any of the component sentences has expired.

4. The prisoner is to be held accountable for his own actions and actions done in concert with others; however, the prisoner is not to be held accountable for activities committed by associates over which the prisoner has no control and could not have been reasonably expected to foresee. *[[Notes and Procedures*. Example: An offender on one occasion steals $2000 worth of property and sells it to a fence, who is engaged in an ongoing operation. It if is not established that the offender was himself an active participant in the ongoing operation, he is to be held accountable only for the one incident.]]

5. The following are examples of circumstances that may be considered as aggravating factors: extreme cruelty or brutality to a victim; the degree of permanence or likely permanence of serious bodily injury resulting from the offender's conduct; an offender's conduct while attempting to evade arrest that causes circumstances creating a significant risk of harm to other persons (e.g., causing a high speed chase or provoking the legitimate firing of a weapon by law enforcement officers).

6. The phrase 'may be considered an aggravating/mitigating factor' is used in this index to provide guidance concerning certain circumstances which may warrant a decision above or below the guidelines. This does not restrict consideration of above or below guidelines decisions only to these circumstances, nor does it mean that a decision above or below the guidelines is mandated in every such case.

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SUBCHAPTER B - DEFINITIONS

1. 'Accessory after the fact' refers to the conduct of one who, knowing an offense has been committed, assists the offender to avoid apprehension, trial, or punishment (e.g., by assisting in disposal of the proceeds of an offense). Note: Where the conduct consists of concealing an offense by making false statements not under oath, grade as 'misprision of felony'. Where the conduct consists of harboring a fugitive, grade as 'harboring a fugitive'.

2. 'Assassination kit' refers to a disguised weapon designed to kill without attracting attention. Unlike other weapons such as sawed-off shotguns which can be used to intimidate, assassination kits are intended to be undetectable in order to make the victim and bystanders unaware of the threat. A typical assassination kit is usually, but not always, a firearm with a silencer concealed in a briefcase or similar disguise and fired without showing the weapon.

3. 'Bodily injury' refers to injury of a type normally requiring medical attention [e.g., broken bone(s), laceration(s) requiring stitches, severe bruises].

4. 'Carnal knowledge' refers to sexual intercourse with a female who is less than 16 years of age and is not the wife of the offender.

5. 'Extortionate extension of credit' refers to any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

6. 'Failure to appear' refers to the violation of court imposed conditions of release pending trial, appeal, or imposition or execution of sentence by failure to appear before the court or to surrender for service of sentence. *[[Notes and Procedures.* 'Failure to appear' is not a strict liability offense. To consider a 'failure to appear' in the absence of a conviction for such offense, the Commission must find upon the information presented that such failure was willful.]]

7. 'Forcible felony' includes, but shall not be limited to, kidnaping, rape or sodomy, aircraft piracy or interference with a flight crew, arson or property destruction offenses, escape, robbery, extortion, or criminal entry offenses, and attempts to commit such offenses.

8. 'Involuntary manslaughter' refers to the unlawful killing of a human being without malice in the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.

9. 'Misprision of felony' refers to the conduct of one who, having knowledge of the actual commission of a felony, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority. The 'concealment' described above requires an act of commission (e.g., making a false statement to a law enforcement officer).

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10. 'Murder' refers to the unlawful killing of a human being with malice aforethought. 'With malice aforethought' generally refers to a finding that the offender formed an intent to kill or do serious bodily harm to the victim without just cause or provocation.

11. 'Opiate' includes heroin, morphine, opiate derivatives, and synthetic opiate substitutes.

12. 'Other illicit drug offenses' include, but are not limited to, offenses involving the following: amphetamines, hallucinogens, barbiturates, methamphetamines, and phencyclidine (PCP).

13. 'Other medium of exchange' includes, but is not limited to, postage stamps, governmental money orders, or governmental coupons redeemable for cash or goods. *[[Notes and Procedures.* The term "other medium of exchange" does not include checks.]]

14. 'Peripheral role' in drug offenses refers to conduct such as that of a person hired as a deckhand on a marijuana boat, a person hired to help offload marijuana, a person with no special skills hired as a courier of drugs on a commercial airline flight, or a person hired as a chauffeur in a drug transaction. This definition does not include persons with decision-making or supervisory authority, persons with relevant special skills (e.g., a boat captain, chemist, or airplane pilot), or persons who finance such operations. *[[Notes and Procedures.* (a) Do not presume that an offender's role is peripheral. Grade as a peripheral role only where there is sufficient credible information to establish this. For example, a person is arrested in possession of 100 grams of pure heroin. The person claims to be a courier but does not cooperate with the arresting agency by naming the source of the heroin or the individuals who are to take the delivery. There is no additional information available establishing the offender's role. Since it cannot be established that the offender had peripheral involvement, do not grade as a peripheral role.

(b) The following are examples of offenders normally graded as having a peripheral role: (a) a crewman on a marihuana boat; (b) a person hired to operate a small launch to offload marihuana; (c) a person hired to smuggle cocaine aboard a regularly scheduled commercial flight; (d) a person hired as a lookout, chauffeur, or bodyguard.

(c) The following are examples of offenders who do not have a peripheral role: (1) an individual who is hired to go to South America and negotiate the purchase of more than 1 kilogram of pure cocaine and arrange its delivery into the United States; (2) an individual who negotiates the sale of more than 1 kilogram of pure cocaine on behalf of the owner of the drug; (3) the financier of a PCP lab producing more than 200,000 doses of PCP; (4) the captain of a freighter hired to import 20,000 pounds or more of marihuana; (5) the captain/owner of a fishing boat hired to import more than 1 kilogram of pure cocaine; (6) the pilot of a private airplane hired to import more than 1 kilogram of pure cocaine; (7) a chemist hired to operate a PCP laboratory.]]

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15. 'Protected person' refers to a person listed in 18 U.S.C. 351 (relating to Members of Congress), 1116 (relating to foreign officials, official guests, and internationally protected persons), or 1751 (relating to presidential assassination and officials in line of succession).

16. 'Serious bodily injury' refers to injury creating a substantial risk of death, major disability or loss of a bodily function, or disfigurement.

17. 'Serious bodily injury clearly intended' refers to a limited category of offense behaviors where the circumstances indicate that the bodily injury intended was serious (e.g., throwing acid in a person's face, or firing a weapon at a person) but where it is not established that murder was the intended object. Where the circumstances establish that murder was the intended object, grade as an 'attempt to murder'.

18. 'Sexual exploitation of children' refers to employing, using, inducing, enticing, or coercing a person less than 16 years of age to engage in any sexually explicit conduct for the purpose of producing a visual or print medium depicting such conduct with knowledge or reason to know that such visual or print medium will be distributed for sale, transported in interstate or foreign commerce, or mailed. It also includes knowingly transporting, shipping, or receiving such visual or print medium for the purposes of distribution for sale, or knowingly distributing for sale such visual or print medium.

19. 'Trafficking in stolen property' refers to receiving stolen property with intent to sell.

20. 'Value of the property' refers to the estimated replacement cost to the victim. *[[Notes and Procedures.* The term "value of the property" refers only to primary losses; not secondary losses. Example (1): An offender defrauds a victim of $50,000. The value of the property is $50,000; not any interest or dividends that the victim would have earned had the money been put into a legitimate investment. Example (2): An offender steals tools worth $16,000; the victim sustains an additional $500 in lost wages during the time spent testifying at trial. The value of the property stolen is the value of the tools.]]

21. 'Voluntary manslaughter' refers to the unlawful killing of a human being without malice upon a sudden quarrel or heat of passion.

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SALIENT FACTOR SCORE (SFS 81)

Item A: PRIOR CONVICTIONS/ADJUDICATIONS (ADULT OR JUVENILE) ..... ☐☐

None ..... = 3
One ..... = 2
Two or Three ..... = 1
Four or more ..... = 0

Item B: PRIOR COMMITMENT(S) OF MORE THAN THIRTY DAYS ..... ☐☐
(ADULT OR JUVENILE)

None ..... = 2
One or two ..... = 1
Three or more ..... = 0

Item C: AGE AT CURRENT OFFENSE/PRIOR COMMITMENTS ..... ☐☐

Age at commencement of current offense
26 years of age or more ..... = 2
20-25 years of age ..... = 1
19 years of age or less ..... = 0

***Exception: If five or more prior commitments of more than thirty days (adult or juvenile), place an "X" here____ and score this item ..... = 0

Item D: RECENT COMMITMENT FREE PERIOD (THREE YEARS), ... ☐☐

No prior commitment of more than thirty days (adult or juvenile) or released to the community from last such commitment at least three years prior to the commencement of the current offense..... = 1

Otherwise ..... = 0

Item E: PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS ..... ☐☐
VIOLATOR THIS TIME

Neither on probation, parole, confinement, or escape status at the time of the current offense; nor commited as a probation, parole, confinement, or escape status violator this time ..... = 1

Otherwise ..... = 0

Item F: HEROIN/OPIATE DEPENDENCE ..... ☐☐

No history of heroin/opiate dependence ... = 1
Otherwise ..... = 0

TOTAL SCORE ☐☐

Note: For purposes of the Salient Factor Score, an instance of criminal behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be treated as a conviction, even if a conviction is not formally entered.

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2.20-01. *Purpose of the Guidelines*

A. *From the Parole Commission and Reorganization Act Public Law 94-233, 18 United States Code*

Sec. 4206 Parole determination criteria

"(a) If an eligible prisoner has substantially observed the rules of the institution or institutions to which he has been confined, and if the Commission, upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, determines:

"(1) that release would not depreciate the seriousness of his offense or promote disrespect for the law; and "(2) that release would not jeopardize the public welfare;

Subject to the provisions of subsections (b) and (c) of this section, and pursuant to guidelines promulgated by the Commission pursuant to section 4203(a)(1), such prisoner shall be released.

"(b) The Commission shall furnish the eligible prisoner with a written notice of its determination not later than twenty-one days, excluding holidays, after the date of the parole determination proceeding. If parole is denied such notice shall state with particularity the reasons for such denial.

"(c) The Commission may grant or deny release on parole notwithstanding the guidelines referred to in subsection (a) of this section if it determines there is good cause for so doing; provided, that the prisoner is furnished written notice stating with particularity the reasons for its determination, including a summary of the information relied upon."

B. *From Joint Explanatory Statement of the Committee of Conference, The Parole Commission and Reorganization Act - Section by Section Analysis*

Sec. 4206 Parole determination criteria

"This section provides the standards and criteria to be used by the Parole Commission in making parole release determinations for federal prisoners who are eligible for parole.

It is the intent of the Conferees that the Parole Commission make certain judgments pursuant to this section, and that the substance of those judgments is committed to the discretion of the Commission.

First, it is the intent of the Conferees that the Parole Commission reach a judgment on the institutional behavior of each prospective parolee. It is the view of the Conferees that understanding by the prisoner of the importance of his institutional behavior is crucial to the maintenance of safe and orderly prisons.

Second, it is the intent of the Conferees that the Parole Commission review and consider both the nature and circumstances of the offense and the history and characteristics of the prisoner. It is the view of the Conferees that these two items are most significant in making equitable release determinations and are a viable basis, when considered together, for making other judgments required by this section.

It is the intent of the Conferees that the Parole Commission, in making each parole determination, shall recognize and make a determination as to the relative severity of the prospective parolee's offense and that in so doing shall be cognizant of the public

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perception of and respect for the law. It is the view of the Conferees that the U. S. Parole Commission is jointed in purpose by the Courts, the Congress and the other Executive agencies in a continuing effort to instill respect for the law. The Parole Commission efforts in this regard are fundamental and shall be manifested by parole determinations which result in the release on parole of only those who meet the criteria of this Act.

Determinations of just punishment are part of the parole process, and these determinations cannot be easily made because they require an even-handed sense of justice. There is no body of competent empirical knowledge upon which parole decision-makers can rely, yet it is important for the parole process to achieve an aura of fairness by basing determinations of just punishment on comparable periods of incarceration for similar offenses committed under similar circumstances. The parole decision-makers must weigh the concepts of general and special deterrence, retribution and punishment, all of which are matters of judgment, and come up with determinations of what is meant by "would not depreciate the seriousness of his offense or promote disrespect for the law" that, to the extent possible, are not inconsistent with the findings in other parole decisions.

The phrase "release would not depreciate the seriousness of his offense or promote disrespect for the law" involves two separate criterion and there may be situations in which one criterion is met but the other remains unsatisfied. For example, if a public official was convicted of fraud which involved a violation of the public trust and was sentenced to three years imprisonment, his release on parole after one year might satisfy the "depreciate the seriousness" criterion but the Commission could justify denying release on the grounds that such release "would promote disrespect for the law."

The use of the phrase "release would not jeopardize the public welfare," is intended by the Conferees to recognize the incapacitative aspect of the use of imprisonment which has the effect of denying the opportunity for future criminality, at least for a time. It is the view of the Conferees that the Parole Commission must make judgments as to the probability that any offender would commit a new offense based upon considerations which include comparisons of the offender with other offenders who have similar backgrounds. The use of predictive devices is at best an inexact science, and caution should be utilized. Such items as prior criminal records, employment history and stability of living patterns have demonstrated their usefulness in making determinations of probability over a substantial period of time. These are not written into the statute, however, as it is the intent of the Conferees to encourage the newly created Parole Commission to continue to refine both the criteria which are used and the means for obtaining the information used therein.

Further, this section provides that Parole Commission guidelines, shall provide a fundamental gauge by which parole determinations are made.

It is the intent of the Conferees that the guidelines serve as a national parole policy which seeks to achieve both equity between individual cases and a uniform measure of justice. The Parole Commission shall actively seek the counsel and comment of the corrections and criminal justice communications (sic) prior to promulgation of guidelines and shall be cognizant of past criticism of parole decision making.

Further, this section provides that when parole is denied, that the prisoner be given a written notice which states with particularity the reasons for such denial.

The phrase "shall be released" includes release at expiration as if on parole or without parole supervision as provided in section 4164 of Title 18, United States Code. The term "holidays" as used in this section refers to congressionally delcared Federal holidays.

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This section also permits the Commission to grant or deny parole notwithstanding the guidelines only when the Commission has determined that there is good cause to do so, and then requires that the prisoner be provided "with particularity the reasons for the Commission's determination, including a summary of the information relied upon." For example, if a prisoner who has served the time required to be released on parole according to the guidelines is denied parole and this denial results in delaying his release beyond the time period recommended by the guidelines, he shall receive a specific explanation of the factors which caused the Commission to reach a determination outside the guidelines.

For the purposes of this section "good cause" means substantial reason and includes only those grounds put forward by the Commission in good faith and which are not arbitrary, irrational, unreasonable, irrelevant or capricious.

The definition of what constitutes good cause to go outside the established guidelines can not be a precise one, because it must be broad enough to cover many circumstances.

For example, in making a parole release determination above the guidelines, the Commission would consider factors which include whether or not the prisoner was involved in an offense with an unusual degree of sophistication or planning, or has a lengthy prior record, or was part of a large scale conspiracy or continuing criminal enterprise.

On the other hand, the Commission would consider factors such as a prisoner's adverse family or health situation in deciding to make a parole release determination below guidelines. By focusing on the justifications for exceptions to the guidelines, subsequent administrative review by the National Appeals Board will be facilitated and there will be more uniformity and greater precision in the grant or denial of parole.

If the decisions to go above or below parole guidelines are frequent, the Commission should reevaluate its guidelines.

§ 2.20-02. *Completion of the Guidelines/Guideline Type Applicable*

A. The applicable guideline evaluation worksheet shall be completed at all initial, revocation, and rescission hearings. It will be referred to in the summary at all subsequent hearings. In each case, the panel shall review the guidelines and, prior to making a recommendation, shall consider whether there is 'good cause' for a decision outside the guidelines, or whether a decision within the guidelines is appropriate.

B. Determination of the applicable guideline type [(Adult) or (Youth/NARA)] will be made as follows:

(1) Court Commitment - Not Probation Revocation. The sentence type will determine the applicable guidelines, except that the Youth/NARA guidelines apply to all offenders less than 22 years of age at the time of the current offense behavior. The age at the time of the current offense refers to the age at the last known overt act of the offense behavior.

(2) Court Commitment - Probation Revocation. Apply the guideline type that would have been applied if the offender had not received probation and had been initially sentenced to prison; except if a federal sentence of more than one year is received for new criminal behavior, the guideline type applicable to the new sentence will be used for the violator term as well.

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(3) Parole Violator - The guideline type applied to the original sentence will determine the guideline type applicable to the violator behavior; except if a federal sentence of more than one year is received for new criminal behavior, the guideline type applicable to the new sentence will be used for the violator term as well.

(4) Parole Rescission - The guideline type applied to the original sentence will determine the guideline type applicable to the rescission behavior, except if a federal sentence of more than one year is received for new criminal behavior, the guideline type applicable to the new sentence will be used for the rescission term as well.

§ 2.20-03. *Calculating Time in Custody*

Time in custody means only time in actual physical custody. Time on probation does not count as time in custody. Nor does time on escape status count. Moreover, a sentence for contempt of court interrupts the running of the federal criminal sentence. Thus, any time spent as a result of a sentence of civil contempt is not counted in calculating time in custody.

A. *Original Parole Consideration*. Calculate the number of months in actual physical custody on the present federal sentence(s). Include jail time credit. If the subject was received directly from state custody, where he was serving time on state charges only, count only the time since the federal sentence began. If a subject has been in state custody for a substantial period, this may be considered in determining whether a decision below the guidelines is warranted. However, it should not be counted as time in custody for purposes of guideline calculation.

B. *Probation Revocation Cases*. Credit any time spent in actual physical custody (federal or state) for any offense considered in assessing offense severity. If a prisoner is received as a probation violator from a split sentence, also credit the months spent in federal custody prior to being placed on probation.

C. *Parole Violators (Reparole Consideration)*. In reparole guideline cases, count as time in custody any time spent in actual physical custody (whether state or federal) as a result of the actions leading to parole violation. [Example: A parolee is convicted of a state charge of forgery and spends 10 months in state custody; he is in federal custody an additional 2 months at the time of his revocation hearing. Time in custody for reparole guideline purposes is 10 + 2 = 12 months.]

§ 2.20-04. *Offense Severity Rating*. In applying the guidelines, the offense severity rating shall reflect the overall circumstances of the present offense behavior. Select the offense rating appropriate to the actual offense behavior that occurred. The severity rating must be explained on the Notice of Action Worksheet (in the space provided) by a brief summary of the specific facts that justified the rating. 28 C.F.R. 2.19(c) provides: "The Commission may take into account any substantial information available to it in establishing the prisoner's offense severity rating, salient factor score, and any aggravating or mitigating circumstances, provided the prisoner is apprised of the information and afforded an opportunity to respond. If the prisoner disputes the accuracy of the information presented, the Commission shall resolve such dispute by the preponderance of the evidence standard; that is, the Commission shall rely upon such information only to the extent that it represents the explanation of the facts that best accords with reason and probability. However, the Commission shall not consider in any determination, charges upon which aprisoner was found not guilty after trial unless reliable information is presented that was not introduced into evidence at such trial (e.g., a subsequent admission or other clear indication of guilt)."

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Information in the file describing offense circumstances more severe than reflected by the offense of conviction (for example, information contained in a count of an indictment that was dismissed as a result of a plea agreement) may be relied upon to select an appropriately higher severity rating only if such information meets the standard indicated in 28 C.F.R. 2.19(c). The normal indicants of reliability are (a) the report is specific as to the behavior alleged to have taken place; (b) the allegation is corroborated by established facts; and (c) the source of the allegation appears credible. The prisoner is to be informed of the allegation at the hearing and given an opportunity to respond. An allegation that is vague, unsupported, or comes from an unreliable source should not be considered. Cases requiring further information or verification may be referred to the Regional Office.

The Commission's consideration of aggravating offense circumstances in applying its guidelines has been approved in the following cases: *Zannino* v. *Arnold*, 531 F.2d 687 (3d Cir. 1976) [allegation that offense was a "large-scale conspiracy" committed in an "unusually sophisticated" manner]; *Brown v. Lundgren*, 528 F.2d 1050 (5th Cir. 1976) [circumstances not given in the opinion but involved pattern of on-going criminal behavior and multiple separate offenses]; *Grattan* v. *Sigler*, 525 F.2d 329 (9th Cir. 1975) [allegation that the prisoner was a "ringleader"]; *Foddrell* v. *Sigler*, 418 F.Supp. 324 (M.D. Pa. 1976) ["sophisticated operation involving large amounts of heroin"]; and *Biancone* v. *Norton*, 421 F.Supp. 1044 (D. Conn. 1976) [multiple separate offenses]; and in the cases cited below. Similarly, Commission's consideration of unadjudicated offenses has been approved in the following cases: *Billiteri* v. *United States Board of Parole*, 541 F.2d 938 (2d Cir. 1976) [offense rated as extortion based on information in the pre-sentence report; the Court specifically rejected the contention that the Government's acceptance of a plea restricted to the conspiracy charge was a bar to the Commission from considering the actual offense behavior]; *Bistram* v. *U.S. Parole Board*, 535 F.2d 329 (5th Cir. 1976) [Commission relied upon dismissed count of kidnapping notwithstanding bargained plea to bank robbery only]; *Lupo* v. *Norton*, 371 F.Supp. 156 (D. Conn. 1974) [prisoner convicted of conspiracy to transport stolen goods was alleged to have committed robbery to obtain same]; and *Manos* v. *U.S. Board of Parole*, 399 F.Supp. 1103 (M.D. Pa. 1975). [Prisoner pleaded guilty to two counts of filing false tax reports involving less than $20,000 but Commission considered entire 22-count indictment charging a total defrauding of $150,000]. These decisions have accorded to the Parole Commission the same scope of discretion as that exercised by the sentencing courts. As stated in *Billiteri*, *supra*, at 444:

> "If therefore, the sentencing judge is not limited to a consideration of only that criminal conduct of the defendant that is related to the offense for which he was convicted, the Parole Board, which is concerned with all facets of a prisoner's character, make-up and behavior, is *a fortiori*, certainly entitled to be fully advised of the contents of the presentence report and to use it in giving an offense severity rating and for such other purposes as it finds necessary and proper. . ."

2.20-05. *Decisions Outside the Guidelines*

A. *In General*. 18 U.S.C. 4206 provides that the Commission may render a decision outside the guidelines for good cause provided the prisoner is furnished a specific explanation for such action. It is in the Commission's discretion to render a decision outside the guidelines (whether above or below) provided the circumstances warrant and such decision is adequately explained. The reasons given in the Notice of Action for a decision above or below the guidelines must explain what specific facts were relied upon to distinguish that case from the "typical" cases for which the guidelines are set. If a decision outside the guidelines follows the recommendation of the

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sentencing judge, the prosecutor or another interested party, it is not sufficient to cite that recommendation as the reason for departure from the guidelines. Instead, the Notice of Action must state the reasoning and factual basis for the recommendation which was found to justify a decision outside the guidelines.

The following are examples of situations in which a decision outside the guidelines appropriately may be considered. This does not mean that these are the only situations in which a decision outside the guidelines may be considered. Nor does it mean that a decision outside the guidelines is mandated for every such case.

Each of the following examples sets forth the Commission's reason for its decision and the specific facts primarily relied upon in support of that reason. Avoid sweeping or ambiguous phrases as well as irrelevant facts. Be specific enough with the facts described so that a person not familiar with the case will know what you are talking about.

B. *Decisions Above the Guidelines*

[Examples 1-3: Aggravating Offense Factors]

1. *Aggravated nature of the offense behavior*:

. . .because of the aggravated nature of your offense behavior: victims were repeatedly beaten and threatened during the offense.

. . .because of the aggravated nature of your offense behavior: you were responsible for an offense of unusual magnitude - investors were defrauded of over ten million dollars during a period of five years.

2. *Extremely vulnerable victim(s)* [e.g., extremely young or aged, or mentally or physically handicapped].

...because of the aggravated nature of your offense behavior which involved an extremely vulnerable victim: you committed the sexual assault of a 10 year old girl.

3. *Unusually extensive, organized criminal enterprise*:

. . .because of the aggravated nature of your offense behavior: you were a ringleader in an unusually extensive, sophisticated criminal enterprise over an eighteen month period which engaged in the fencing of furs and jewelry stolen in numerous burglaries, and involved an extensive network of contacts and sophisticated methods of concealing the origin of the stolen goods.

. . .because of the aggravated nature of your offense behavior: you played a leadership role in an unusually extensive, organized criminal enterprise - a cocaine importation and distribution operation which involved monthly multi-kilo shipments over a two year period and a multi-state distribution network with over twelve co-conspirators acting under your direction.

[Examples 4-7: Parole Prognosis]

4. *Poorer Parole Risk (Repeated failure under parole; or offense committed while on bond; or lengthy history of criminally related alcohol abuse; or ongoing criminal behavior for a period of years):*

. . .because you are a poorer parole risk than indicated by your salient factor score in that you have repeatedly failed to adjust to previous periods of parole supervision.

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. . .because you are a poorer parole risk than indicated by your salient factor score: you committed a state firearms act offense while on bond in your present criminal case.

. . .because you are a poorer parole risk than indicated by your salient factor score: you have an approximately twenty year history of alcohol abuse which is related to your criminal behavior.

. . .because you are a poorer parole risk than indicated by your salient factor score: [you have had an on-going involvement in loan-sharking and extortion activities since approximately 1963] [you have admitted to on-going involvements in drug trafficking for the past 11 years].

5. *More Serious Parole Risk (History of repetitive assaultive behavior):*

. . .because you are a more serious parole risk than indicated by your salient factor score due to your history of repetitive assaultive behavior: your prior record shows a conviction for aggravated assault and a conviction for armed robbery. Your present offense behavior involved a bank robbery in which an overt threat of violence was made.

6. *More Serious Parole Risk (History of repetitive sophisticated criminal behavior):*

. . .because you are a more serious parole risk than indicated your salient factor score due to your history of repetitive sophisticated criminal behavior: three out of five prior convictions involve sophisticated fraud similar to your current offense.

7. *More Serious Parole Risk (Unusually extensive and serious prior record):*

. . .because you are a more serious parole risk than indicated by your salient factor score due to your extensive and serious prior record. Your criminal record shows eight prior adult convictions for serious offenses [give specifics].

[Example 8: Institutional Misconduct]

8. *Specified instance of institutional misconduct*:

. . .because you failed to maintain a good institutional record. You were found to have [been in an unauthorized area without permission] [possessed narcotic paraphernalia] by an institutional disciplinary committee on September 9, 1976. [NOTE: Consult Rescission Guidelines for appropriate penalty].

[Example 9: Other]

9. *Other*

. . .because you have refused to [make restitution] [return the property stolen] [pay an outstanding fine] athough you have the ability to do so. [Note: where a decision above the guidelines is rendered, the Notice of Action may advise the prisoner that should there be a change in circumstances (e.g., restitution or a full accounting of his finances made), the prisoner may request reopening of the case under 28 C.F.R. 2.28(a).]

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C. *Decisions Below the Guidelines*

[Examples 1-6: Mitigating Offense Factors]

1. *Mitigating Offense Factors*:

. . .The prisoner's offense was less serious than the rated offense would normally be: [give specifics] [e.g., the amount of drugs sold was usually small and no financial gain was involved] [the prisoner was only peripherally involved in the offense].

. . .The prisoner did not knowingly contemplate that his conduct would result in the harm that it did and the harm could not have been reasonably foreseen [give specifics].

2. *Diminished Mental Capacity*:

. . .The prisoner had diminished mental capacity to contemplate the seriousness of the offense [because of extremely low intelligence or extreme youthfulness].

3. *Duress*:

. . .There is confirmed evidence that duress was overtly exercised to force the prisoner to commit the offense.

4. *Attempted Corrective Measure*:

. . .There is confirmed evidence that the prisoner attempted to withdraw prior to completion of the offense or attempted to make restitution prior to discovery of the offense.

5. *Genuine Claim of Right* [Property Offenses]:

. . .because the prisoner believed he had genuine claim of right to the property involved even though the method used to obtain the property was unlawful.

6. *Extreme Provocation* [Assaultive Offenses]:

...because there was extraordinarily severe provocation by the victim or provocation combined with a diminished mental state (occurring through no fault of the offender).

[Example 7: Parole Prognosis]

7. *Better Parole Risk*

. . .The prisoner is a better parole risk than his salient factor score indicates because [give specifics] [e.g., his low salient factor score results exclusively from trivial offenses; substantial crime-free period since his last offense; he has extremely strong community resources available].

[Examples 8-10: Other]

8. *Substantial Cooperation*:

. . .The prisoner has provided substantial cooperation to the government [e.g., in the prosecution of other cases; in averting a riot] which has been otherwise unrewarded.

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9. *Substantial Medical Problems*:

. . .Because of poor medical prognosis due to a heart condition [terminal cancer].

10. *Substantial Period in Custody on other Sentence(s) or Additional Committed Sentences:*

. . .The prisoner has served a substantial continuous period of time [. . . . months] in federal or state custody as a result of other charges.

. . .The prisoner faces a substantial period of time on additional committed sentences estimated as at least [. . . . months].*

*NOTE: Deportation shall not be considered a sufficient reason for a decision below the guidelines.

[Example 11: Superior Program Achievement]

11. *Superior Program Achievement*

. . .The prisoner has a record of superior program achievement [give specifics]. NOTE: Decisions below the guidelines for superior program achievement are governed by 28 C.F.R. §2.60.

§ 2.20-06. *Salient Factor Scoring Manual*. The following instructions serve as a guide in computing the salient factor score. Obviously, no guide can include all possible situations - good judgment always must be used. When in doubt about a classification, follow as closely as possible the examples listed below. Remember, however, that the salient factor score is designed as an actuarial parole prognosis aid. You may override this actuarial predictive aid, where warranted, provided you adequately explain your reasons.

ITEM A. PRIOR CONVICTIONS/ADJUDICATIONS (ADULT OR JUVENILE) [[None = 3; One = 2; Two or three = 1; Four or more.... = 0]]

Scoring Instructions

A.1 *In General*. Except as specifically noted, count all convictions/adjudications (adult or juvenile) for criminal offenses that were committed prior to the present period of confinement. Do not count the current federal offense or state/local convictions resulting from the current federal offense. Convictions for prior offenses that are charged or adjudicated together (e.g., three burglaries) are counted as a single prior conviction, except when such offenses are separated by an intervening arrest (e.g., three convictions for larceny and a conviction for an additional larceny committed after the arrest for the first three larcenies would be counted as two prior convictions, even if all four offenses were adjudicated together).

A.2 *Convictions*

(a) Felony convictions are counted. Non-felony convictions are counted, except as listed under (b) and (c). Convictions for driving while intoxicated/while under the influence/while impaired are counted. Where it is established by the preponderance of evidence that the underlying offense behavior was more serious than the offense of conviction, assess the conviction using the criteria applicable to the underlying offense behavior.

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(b) Convictions for the following offenses are counted only if the sentence resulting was a commitment of more than thirty days (as defined in item B) or probation of one year or more (as defined in Item E), or if the record indicates that the offense was classified by the jurisdiction as a felony (regardless of sentence):

1. contempt of court;
2. disorderly conduct/disorderly person/breach of the peace/ disturbing the peace;
3. driving without a licence/ with a revoked or suspended license/with a false license;
4. false information to a police officer;
5. fish and game violations;
6. gambling;
7. loitering;
8. non-support;
9. prostitution;
10. resisting arrest;
11. trespassing.

(c) Convictions for certain minor offenses are not counted, regardless of sentence. These include:

1. hitchhiking;
2. local regulatory violations;
3. public intoxication/possession of alcohol by a minor/possession of alcohol in an open container;
4. traffic violations (except as specifically listed);
5. vagrancy."

A.3 *Juvenile Conduct*. Count juvenile convictions/adjudications except as follows:

(a) Do not count any status offense (e.g., runaway, truancy, habitual disobedience) unless the behavior included a criminal offense which would otherwise be counted;

(b) Do not count any criminal offense committed at age 15 or less, unless it resulted in a commitment of more than 30 days.

A.4 *Military Conduct*. Count military convictions by general or special court-martial (not summary court-martial or Article 15 disciplinary proceeding) for acts that are generally prohibited by civilian criminal law (e.g., assault, theft). Do not count convictions for strictly military offenses. NOTE: This does not preclude consideration of serious or repeated military misconduct as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score in relation to this item).

A.5 *Diversion*. Conduct resulting in diversion from the judicial process without a specific finding of guilt (e.g., deferred prosecution, probation without plea) is not to be counted in scoring this item. However, behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be counted as a conviction even if no formal conviction results.

A.6 *Setting Aside of Convictions/Restoration of Civil Rights*. Setting aside or removal of juvenile convictions/adjudications is normally for civil purposes (to remove civil penalties and stigma). Such convictions/adjudications are to be counted for purposes of assessing parole prognosis. This also applies to adult convictions/adjudications which may be set aside by various methods (including pardon). However, convictions/adjudications that were set aside or pardoned on grounds of innocence are not to be counted.

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A.7 *Convictions Reversed or Vacated on Grounds of Constitutional or Procedural Error.* Exclude any conviction reversed or vacated for constitutional or procedural grounds, unless the prisoner has been retried and reconvicted. It is the Commission's presumption that a conviction/adjudication is valid. If a prisoner challenges such conviction he/she should be advised to petition for a reversal of such conviction in the court in which he/she was originally tried, and then to provide the Commission with evidence of such reversal. NOTE: Occasionally the presentence report documents facts clearly indicating that a conviction was unconstitutional for deprivation of counsel [this occurs only when the conviction was for a felony, or for a lesser offense for which imprisonment was actually imposed; and the record is clear that the defendant (1) was indigent, and (2) was not provided counsel, and (3) did not waive counsel]. In such case, do not count the conviction. Similarly, if the offender has applied to have a conviction vacated and provides evidence (e.g., a letter from the court clerk) that the required records are unavailable, do not count the conviction. NOTE: If a conviction found to be invalid is nonetheless supported by persuasive information that the offender committed the criminal act, this information may be considered as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score).

A.8 *Ancient Prior Record.* If both of the following conditions are met: (1) the offender's only countable convictions under Item A occurred at least ten years prior to the commencement of the current offense behavior (the date of the last countable conviction under Item A refers to the date of the conviction, itself, not the date of the offense leading to conviction), and (2) there is at least a ten year commitment free period in the community (including time on probation or parole) between the last release from a countable commitment (under Item B) and the commencement of the current offense behavior; then convictions/commitments prior to the above ten year period are not to be counted for purposes of Items A, B, or C. NOTE: This provision does not preclude consideration of earlier behavior (e.g., repetition of particularly serious or assaultive conduct) as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score). Similarly, a substantial crime free period in the community, not amounting to ten years, may, in light of other factors, indicate that the offender belongs in a better risk category than the salient factor score indicates.

A.9 *Foreign Convictions.* Foreign convictions (for behavior that would be criminal in the United States) are counted.

A.10 *Tribal Court Convictions.* Tribal court convictions are counted only where it is established that the subject was represented by counsel or waived counsel. [NOTE: This added requirement is due to the unique status of tribal courts.]

A.11 *Forfeiture of Collateral.* If the only known disposition is forfeiture of collateral, count as a conviction (if a conviction for such offense would otherwise be counted).

ITEM B. PRIOR COMMITMENTS OF MORE THAN THIRTY DAYS (ADULT OR JUVENILE) [[None = 2; One or two = 1; Three or more = 0]]

Scoring Instructions

B.1 *Count* all prior commitments of more than thirty days (adult or juvenile) resulting from a conviction/adjudication listed under Item A, except as noted below. Also count commitments of more than thirty days imposed upon revocation of probation or parole where the original probation or parole resulted from a conviction/adjudication counted under Item A.

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B.2 *Count* only commitments that were imposed prior to the commission of the last overt act of the current offense behavior. Commitments imposed after the current offense are not counted for purposes of this item. Concurrent or consecutive sentences (whether imposed as the same time or at different times) that result in a continuous period of confinement count as a single commitment. However, a new court commitment of more than thirty days imposed for an escape/attempted escape or for criminal behavior committed while in confinement/escape status counts as a separate commitment.

B.3 *Definitions*

(a) This item only includes commitments that were actually imposed. Do not count a suspended sentence as a commitment. Do not count confinement pending trial or sentencing or for study and observation as a commitment unless the sentence is specifically to 'time served'. If a sentence imposed is subsequently reconsidered and reduced, do not count as a commitment if it is determined that the total time served, including jail time, was 30 days or less.

(b) This item includes confinement in adult or juvenile institutions, and residential treatment centers. It also includes confinement in a community treatment center. It does not include foster home placement.

(c) If a committed sentence of more than thirty days is imposed prior to the current offense but the offender avoids or delays service of the sentence (e.g., by absconding, escaping, bail pending appeal), count as a prior commitment. Note: Where the subject unlawfully avoids service of a prior commitment by escaping or failing to appear for service of sentence, this commitment is also to be considered in Items D and E.

ITEM C. AGE AT COMMENCEMENT OF THE CURRENT OFFENSE/PRIOR COMMITMENTS OF MORE THAN THIRTY DAYS (ADULT OR JUVENILE) [[Age at commencement of the current offense: 26 years of age or more = 2***; 20-25 years of age = 1***; 19 years of age or less = 0. ***EXCEPTION: If five or more prior commitments of more than thirty days (adult or juvenile), place an 'x' here [ ] and score this item .... = 0]].

Scoring Instructions

C.1 *Score 2* if the subject was 26 years of age or more at the commencement of the current offense and has fewer than five prior commitments.

C.2 *Score 1* if the subject was 20-25 years of age at the commencement of the current offense and has fewer than five prior commitments.

C.3 *Score 0* if the subject was 19 years of age or less at the commencement of the current offense, or if the subject has five or more prior commitments.

C.4 *Definitions*

(a) Use the age at the commencement of the subject's current federal offense behavior, except as noted under special instructions for federal probation/ parole/confinement/escape status violators.

(b) Prior commitment is defined under Item B.

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ITEM D. RECENT COMMITMENT FREE PERIOD (THREE YEARS) [[No prior commitment of more than thirty days (adult or juvenile), or released to the community from last such commitment at least three years prior to the commencement of the current offense = 1; Otherwise = 0]]

Scoring Instructions

D.1 *Score 1* if the subject has no prior commitments; or if the subject was released to the community from his/her last prior commitment at least three years prior to commencement of his/her current offense behavior.

D.2 *Score 0* if the subject's last release to the community from a prior commitment occurred less than three years prior to the current offense behavior; or if the subject was in confinement/escape status at the time of the current offense.

D.3 *Definitions*

(a) Prior commitment is defined under Item B.

(b) Confinement/escape status is defined under Item E.

(c) Release to the community means release from confinement status (e.g., a person paroled through a CTC is released to the community when released from the CTC, not when placed in the CTC).

ITEM E. PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS VIOLATOR THIS TIME [[Neither on probation, parole, confinement, or escape status at the time of the current offense; nor committed as a probation, parole, confinement, or escape status violator this time = 1; Otherwise = 0]]

Scoring Instructions

E.1 *Score 1* if the subject was not on probation or parole, nor in confinement or escape status at the time of the current offense behavior; and was not committed as a probation, parole, confinement, or escape status violator this time.

E.2 *Score 0* if the subject was on probation or parole or in confinement or escape status at the time of the current offense behavior; or if the subject was committed as a probation, parole, confinement, or escape status violator this time.

E.3 *Definitions*

(a) The term probation/parole refers to a period of federal, state, or local probation or parole supervision. Occasionally, a court disposition such as 'summary probation' or 'unsupervised probation' will be encountered. If it is clear that this disposition involved no attempt at supervision, it will not be counted for purposes of this item. NOTE: Unsupervised probation/parole due to deportation is counted in scoring this item.

(b) The term 'parole' includes parole, mandatory parole, conditional release, or mandatory release supervision (i.e., any form of supervised release).

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(c) The term 'confinement/escape status' includes institutional custody, work or study release, pass or furlough, community treatment center confinement, or escape from any of the above.

ITEM F. HISTORY OF HEROIN/OPIATE DEPENDENCE [[No history of heroin or opiate dependence = 1; Otherwise = 0]]

Scoring Instructions

F.1 *Score 1* if the subject has no history of heroin or opiate dependence.

F.2 *Score 0* if the subject has any record of heroin or opiate dependence.

F.3 *Ancient Heroin/Opiate Record*. If the subject has no record of heroin/opiate dependence within ten years (not counting any time spent in confinement), do not count a previous heroin/opiate record in scoring this item.

F.4 *Definition*. For calculation of the salient factor score, the term "heroin/opiate dependence" is restricted to dependence on heroin, morphine, or dilaudid. Dependence refers to physical or psychological dependence, or regular or habitual usage. Abuse of other opiate or non-opiate substances is not counted in scoring this item. However, this does not preclude consideration of serious abuse of a drug not listed above as as negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score in relation to this item).

SPECIAL INSTRUCTIONS - PRISONERS COMMITTED AS FEDERAL PROBATION VIOLATORS

Item A Where there is criminal conduct during probation (established by conviction or adjudicated at a probation revocation hearing), the original federal offense (rather than the most recent criminal conduct) is counted in this item. Where there is no criminal conduct during probation, do not count the original offense as a prior conviction.

Item B Count all prior commitments of more than thirty days which were imposed prior to the behavior resulting in the current probation revocation. If the subject is committed as a probation violator following a 'split sentence' for which more than thirty days were served, count the confinement portion of the 'split sentence' as a prior commitment. [NOTE: the prisoner is still credited with the time served toward the current commitment.]

Item C Use the age at commencement of the probation violation not the original offense.

Item D Count backwards three years from the commencement of the probation violation.

Item E By definition, no point is credited for this item. Exception - A case placed on unsupervised probation (other than for deportation) would not lose credit for this item.

Item F No special instructions.

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SPECIAL INSTRUCTIONS - FEDERAL PAROLE VIOLATORS WITH NEW CRIMINAL BEHAVIOR

Item A The conviction from which paroled counts as a prior conviction.

Item B The commitment from which paroled counts as a prior commitment.

Item C Use the age at commencement of the new criminal behavior.

Item D Count backwards three years from the commencement of the new criminal behavior.

Item E By definition, no point is credited for this item.

Item F No special instructions.

SPECIAL INSTRUCTIONS - FEDERAL CONFINEMENT/ESCAPE STATUS VIOLATORS WITH NEW CRIMINAL BEHAVIOR IN THE COMMUNITY

Item A The conviction being served at the time of the confinement/escape status violation counts as a prior conviction.

Item B The commitment being served at the time of the confinement/escape status violation counts as a prior commitment.

Item C Use the age at commencement of the confinement/escape status violation.

Item D By definition, no point is credited for this item.

Item E By definition, no point is credited for this item.

Item F No special instructions.

§ 2.20-07. *Principle of Parsimony*. It is the intent of the Commission to use the least restrictive sanction required to fulfill the purposes of 18 U.S.C. 4206 and 28 C.F.R. 2.20. It is expected that when a decision within the guidelines is recommended, a case generally will be placed in the lower half of the guideline range unless the offense behavior or prior record/salient factor score is among the more serious contained within the category [For example, other factors being equal, a property offense near the lower limit of the Category Four severity ($20,000) generally would be placed towards the bottom of the range; a property offense near the upper limit ($100,000) generally would be placed higher in the range; less culpable codefendants would generally be placed towards the bottom of the range; codefendants with prime responsibility would generally be placed higher in the range]. If the offense behavior involved (a) the possession of a weapon during the commission of another offense (e.g., robbery with a weapon, or possession of a weapon during a drug offense); or (b) the offense behavior involved multiple separate Category Five or higher offenses not sufficient to raise the severity level (e.g., two robberies); or (c) the offender is a parole violator with new criminal conduct, the case will normally be placed in the upper half of the applicable guideline range. It is to be stressed that this paragraph is intended to provide a methodology to promote analysis, not a mechanical rule.

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